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Rules and Regulations

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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.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AN07

Federal Employees Health Benefits Program: Enrollment Options Following the Termination of a Plan or Plan Option

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) Program regulations regarding enrollment options following the termination of a plan or plan option.

DATES: This rule is effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger at *Chelsea.Ruediger@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) issued a Notice of Proposed Rulemaking on January 7, 2015 to amend Title 5 of the Code of Federal Regulations Part 890 to update enrollment options following the termination of a plan or plan option in the Federal Employees Health Benefits (FEHB) Program. During the public comment period on the proposed rule, OPM received five comments including three from FEHB health plan carriers and two from citizens. These comments are summarized and addressed below.

One commenter asked if an annuitant who fails to make a health plan enrollment election following a plan or plan option termination and is involuntarily enrolled into the lowest cost nationwide plan will have an opportunity to change his or her enrollment before the next annual Open Season. The final rule provides belated enrollment opportunities for annuitants who, for reasons beyond their control, were unable to make an enrollment election during the allowed time following the termination of a plan or plan option.

One commenter requested information about a specific FEHB plan and whether or not it would leave the FEHB Program. The specific answer to that question is outside the scope of this final regulation. Each year in advance of the annual Open Season, OPM announces any plans and plan options that intend to leave the Program. If a plan or plan option leaves the Program mid-plan year, OPM will make a timely announcement. The carrier will also notify its enrollees.

One commenter asked for clarification concerning the enrollment type (self only, self plus one, or self and family) of automatic enrollments into the lowest-cost nationwide plan. Though it is not specifically addressed in this final regulation, OPM will follow current standard procedures for enrollments to be of the enrollment type that the enrollee carried before the plan or plan option terminated.

One commenter asked that the final rule include provisions to automatically enroll enrollees into the lowest-cost plan available with the same carrier. In the event that an entire plan is terminated from the FEHB Program, this is not possible. However, in the event of a plan option termination, the final rule does include provisions to automatically enroll enrollees into the lowest-cost remaining available option of their current plan that is not a High Deductible Health Plan (HDHP).

One carrier requested that OPM identify the lowest-cost nationwide plan available for each enrollment type: Self only, self plus one and self and family. Another requested that OPM consider identifying lowest-cost local plans as the default plans for automatic enrollments following a plan or plan option termination. This commenter asserted that local plans may be better equipped to provide access to care for enrollees living in their service area. OPM declines to adopt these suggestions. OPM's intent in this regulation is to ensure that all enrollees with terminating plans have adequate access to affordable health insurance coverage while maintaining a procedure that is reasonable to administer and communicate. Enrollees will have opportunities to change plans according to existing rules if they feel a better plan would meet their needs.

One commenter suggested that OPM clarify whether or not a plan that normally requires a membership or association fee would be considered as the lowest-cost nationwide plan if that plan agreed to waive the fee for any individuals who are automatically enrolled following a plan or plan option termination. OPM declines to make this change as no supporting comments were received for this suggestion.

One commenter suggested that OPM include an additional criterion for selecting the lowest-cost nationwide plan to address actual capability to assume the risk for an influx of new enrollees. Nationwide FEHB plans have adequate networks and system capabilities to accommodate enrollees in any region of the U.S.

One commenter asked that OPM define nationwide plan as ''any plan that provides coverage in all fifty states for which any employee and annuitant is eligible'' in the final rule. The final rule is not amended to adopt this definition. Health benefits plans with which OPM may contract are defined in 5 U.S.C. 8903.

One commenter requested that OPM hold any remaining contingency reserve funds in an account earmarked for the lowest-cost nationwide plan. The commenter suggested that if the account accrued to a certain amount, OPM could use the balance to reduce the administrative load. OPM declines to make this change. Currently, OPM does not have the legal authority to create an additional contingency reserve for the lowest-cost nationwide plan nor to use excess funds at the end of a year to reduce administrative costs. 890.503(c)(5) allows carriers to request special transfers from their contingency reserves for ''unexpected claims experience and variations from expected community rates.''

One commenter suggested that OPM reserve the right to change the plan to be used for automatic enrollments following the termination of a plan or plan option in the event that the selected plan is unable to accommodate new enrollees. § 890.301(n) has been updated in the final rule to allow OPM, at its sole discretion, to designate an

alternate plan for automatic enrollments.

In order to maintain consistency among program participants, OPM has updated § 890.306(l)(4)(iv) to clarify that annuitants who wish to change their enrollment following an involuntary enrollment due to a plan or plan option termination may do so prospectively, rather than retroactively, within 90-days after OPM advises the annuitant of the new enrollment.

Paperwork Reduction Act (PRA)

OPM has reviewed this proposed rule for PRA implications and have determined that it does not apply to this action.

Regulatory Impact Analysis

OPM has examined the impact of this proposed rule as required by Executive Order 12866 and Executive Order 13563, which directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. After completing this analysis, OPM has determined that this rule is not considered a major rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only impacts options available for FEHB enrollees when the plan or plan option in which they are enrolled terminates.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 890

Administration and general provisions; Health benefits plans; Enrollment, Temporary extension of coverage and conversion; Contributions and withholdings; Transfers from retired FEHB Program; Benefits in medically underserved areas; Benefits for former spouses; Limit on inpatient hospital charges, physician charges, and FEHB benefit payments; Administrative sanctions imposed against health care providers; Temporary continuation of coverage; Benefits for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon; Department of Defense Federal Employees Health Benefits Program demonstration project; Administrative practice and procedure, Employee benefit plans, Government employees, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246 (b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. Amend § 890.301 by revising paragraphs (i)(4)(ii) through (iv) and adding paragraphs (i)(4)(v) and (n) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(i) * * *

(4) * * *

(ii) If the whole plan is discontinued, an employee who does not change the enrollment within the time set in (i)(4)(i) of this section will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section;

(iii) If one or more options of a plan are discontinued, an employee who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP).

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be enrolled in the lowest-cost nationwide plan option, as defined in paragraph (n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An employee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in paragraph (n) of this section, may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section;

* * * * *

(n) OPM will annually determine the lowest-cost nationwide plan option calculated based on the enrollee share of the cost of a self only enrollment. The plan option identified may not be a High Deductible Health Plan (HDHP) or an option from a health benefits plan that charges an association or membership fee. OPM reserves the right to designate an alternate plan for automatic enrollments if OPM determines circumstances dictate this.

■ 3. Amend § 890.306 by revising paragraphs (l)(4)(ii) through (v) and adding paragraph (l)(4)(vi) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(l) * * *

(4) * * *

(ii) If a plan discontinues all of its existing options, an annuitant who does not change his or her enrollment is deemed to have enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n); except when the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies.

(iii) If one or more options of a plan are discontinued, an annuitant who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP). In the event that the annuity is insufficient to pay the withholdings, then paragraph (q) of this section applies;

(iv) After an involuntary enrollment under paragraph (l)(4)(ii) or (iii) of this section becomes effective, the annuitant may change the enrollment to another option of the plan into which he or she was enrolled or another health plan of his or her choice prospectively within 90-days after OPM advises the annuitant of the new enrollment;

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(vi) An annuitant who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

■ 4. Amend § 890.806 by revising paragraphs (j)(4)(ii) through (iv) and adding paragraph (j)(4)(v) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(ii) If the whole plan is discontinued, a former spouse who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, a former spouse who does not change the enrollment will be enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If a former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n) of this section. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) A former spouse who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

■ 5. Amend § 890.1108 by revising paragraphs (h)(4)(ii) through (iv) and adding paragraph (h)(4)(v) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(ii) If the whole plan is discontinued, an enrollee who does not change the enrollment within the time set will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n);

(iii) If one or more options of a plan are discontinued, an enrollee who does not change the enrollment will enrolled in the remaining option of the plan, or in the case of a plan with two or more options remaining, the lowest-cost remaining option that is not a High Deductible Health Plan (HDHP);

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be enrolled in the lowest-cost nationwide plan option, as defined in § 890.301(n). The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes;

(v) An enrollee who is unable, for causes beyond his or her control, to make an enrollment change within the 60 days following a disaster and is, as a result, enrolled in the lowest-cost nationwide plan as defined in § 890.301(n), may request a belated enrollment into the plan of his or her choice subject to the requirements of paragraph (c) of this section.

* * * * *

[FR Doc. 2015–27378 Filed 10–27–15; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–15–0026; FV15–984–1 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the California Walnut Board (Board) for an increase of the assessment rate established for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of walnuts handled under the marketing order. The Board locally administers the marketing order and is comprised of growers and handlers of walnuts operating within the area of production. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Martin Engeler, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Terry.Vawter@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffery.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on September 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of assessable walnuts handled.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0189 per kernelweight pound of assessable walnuts that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 4, 2015, and unanimously recommended 2015–16 expenditures of $22,668,980, and an assessment rate of $0.0379 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $9,861,810. The assessment rate of $0.0379 is $0.019 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2015–16 marketing year is estimated at 518,000 tons inshell or 466,200,000 kernelweight pounds, which is the five-year average of walnut production. At the recommended higher assessment rate of $0.0379 per kernelweight pound, the Board should collect approximately $17,668,980 in assessment income. The Board also recommended using $5,000,000 from its monetary reserve to help fund the increase in the expenditures. Assessments and funds from the reserve will be adequate to cover its 2015–16 budgeted expenses of $22,668,980.

The Board noted that sales of California walnuts in the domestic market have been declining in recent years, and believes that more market development and promotion would reverse the trend. Thus, they are committed to increasing expenditures on domestic marketing promotion projects and programs.

The following table compares major budget expenditures recommended by the Board for the 2014–15 and 2015–16 marketing years:

CHART 1

Budget expense categories	2014–15	2015–16
Employee Expenses	$ 1,711,000	$1,846,500
Travel/Board Expenses/Annual Audit	190,000	191,000
Office Expenses	241,000	254,000
Controlled Purchases	10,000	10,000
Crop Acreage Survey	0	100,000
Crop Estimate	126,000	130,000
Production Research Director	94,500	94,500
Production Research	1,600,000	1,700,000
Sustainability Project	75,000	75,000
Grades and Standards Research	600,000	600,000
Domestic Market Development	5,742,000	18,478,440
Reserve for Contingency	166,310	32,790

The assessment rate recommended by the Board was derived by dividing anticipated assessment revenue needed by estimated shipments of California walnuts certified as merchantable. The 518,000 ton (inshell) estimate for merchantable shipments is an average of shipments during five prior years. Pursuant to § 984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (518,000 tons x 2,000 pounds per ton x 0.45), which yields 466,200,000 kernelweight pounds. At $0.0379 per pound, the new assessment rate should generate $17,668,980 in assessment income. Along with $5,000,000 from the Board's monetary reserve, this assessment rate will allow the Board to cover its expenses.

Section 984.69 of the order authorizes the Board to carry over excess funds into subsequent marketing years as a reserve, provided that funds already in the reserve do not exceed approximately two years' budgeted expenses. Using $5,000,000 of reserve funds would leave an estimated $5,895,932 in reserve at the end of the 2015–16 marketing year, well within the requirements of the marketing order.

The assessment rate will be in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate established by this rule will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget

of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2015–16 budget and those for subsequent marketing years would be reviewed, and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,500 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the marketing order. The Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000. (13 CFR 121.201)

According to USDA's National Agricultural Statistics Service's (NASS's) 2012 Census of Agriculture, approximately 89 percent of California's walnut farms were smaller than 100 acres. Further, NASS reports that the average yield for 2014 was 1.95 tons per acre, and the average price received for 2013 was $3,710 per ton. The average price for 2014 has not been reported yet.

A 100-acre farm with an average yield of 1.95 tons per acre would therefore have been expected to produce about 195 tons of walnuts during 2010–11. At $3,710 per ton, that farm's production would have had an approximate value of $723,450. Since Census of Agriculture information indicates that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $723,450 in 2014–15, below the SBA threshold of $750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the Board, approximately two-thirds of California's walnut handlers each shipped merchantable walnuts valued under $7,000,000 during the 2014–15 marketing year and would, therefore, be considered small handlers according to the SBA definition.

This rule increases the assessment rate established by the Board and applicable to handlers for the 2015–16 and subsequent marketing years from $0.0189 to $0.0379 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2015–16 expenditures of $22,668,980 and an assessment rate of $0.0379 per kernelweight pound of assessable walnuts. The assessment rate of $0.0379 is $0.019 higher than the 2014–15 rate. The quantity of assessable walnuts for the 2015–16 marketing year is estimated at 518,000 tons inshell weight, or 466,200,000 kernelweight pounds. Thus, the $0.0379 rate should provide $17,668,980 in assessment income.

The Board also recommended using $5,000,000 from its monetary reserve to augment the assessment income. Thus, assessment income plus the $5,000,000 should be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased domestic marketing promotion and programs. The Board has become concerned with the declining sales of California walnuts in the domestic market, and believes that sagging sales can be improved through increased promotional activities. Thus, they recommended an increase in domestic market development from approximately $5.7 million during the 2014–15 marketing year to approximately $18.4 million for the 2015–16 marketing year.

The major expenses for the 2015–16 marketing year, as outlined in Chart 1 include: $1,846,500 for employee expenses; $191,000 for travel, board, and annual audit expenses; $254,000 for office expenses; $10,000 for controlled purchases; $100,000 for the crop acreage survey; $130,000 for the crop estimate; $94,500 for the salary of the Production Research Director; $1,700,000 for production research; $75,000 for a sustainability project; $600,000 for grades and standards research; $18,478,440 for domestic market development projects; and $32,790 for the contingency reserve.

In comparison, these expenditures for the 2014–15 marketing year were: $1,711,000 for employee expenses; $190,000 for travel, board, and annual audit expenses; $241,000 for office expenses; $10,000 for controlled purchases; $126,000 for the crop estimate; $94,500 for the salary of the Production Research Director; $1,600,000 for production research; $75,000 for the sustainability project; $600,000 for grades and standards research; $5,742,000 for domestic market development projects; and $166,310 for the contingency reserve. There was no acreage survey expense in the 2014–15 marketing year.

The Board reviewed and unanimously recommended 2015–16 expenditures of $22,668,980. Prior to arriving at this budget, the Board considered alternative expenditure levels, such as spending an additional $5,000,000, or $10,000,000 for domestic market development projects, as well as alternate assessment rate levels. They ultimately determined that the recommended expenditure and assessment levels were reasonable and necessary to assist in improving domestic sales, as well as properly administering the order.

The assessment rate of $0.0379 per kernelweight pound of assessable walnuts was derived by dividing anticipated assessment revenue needed by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 466,200,000 pounds. It was determined that $17,668,980 in assessment income was needed, and assessment income combined with funds from the monetary reserve should allow the Board to cover its expenses of $22,668,980.

The Board also considered information from various committees who deliberate and formulate their own budgets of expenses and make recommendations to the Board. The committees include the Market Development, Production Research, Budget and Personnel, and Grades and Standards Committees.

Unspent funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses.

According to NASS, the season average grower prices for the years 2012 and 2013 were $3,030 and $3,710 per ton, respectively. Prices have not yet been reported for 2014. The 2012 and 2013 prices provide a range within which the 2015–16 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound

range of $1.52 to $1.86. Dividing these inshell per pound prices by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2015–16 price range estimate of $3.38 to $4.13 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0379 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2015–16 marketing year as a percentage of total grower revenue will thus likely range between 0.92 and 1.11 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. These costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and encouraged to participate in Board deliberations on all issues. Like all Board meetings, the June 4, 2015, meeting was a public meeting and all entities, both large and small, were free to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Walnuts Grown in California). No changes in those requirements are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 18, 2015, (80 FR 49930). Copies of the proposed rule were also provided to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 17, 2015, was provided for interested persons to respond to the proposal. No complete comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrderSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2015–16 crop walnuts from growers, the marketing year began on September 1, 2015, and the assessment rate applies to all walnuts received during the 2015–16 and subsequent marketing years. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided in the proposed rule.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2015, an assessment rate of $0.0379 per kernelweight pound is established for California merchantable walnuts.

Dated: October 22, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–27359 Filed 10–27–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS–FV–15–0034; FV15–987–1 IR]

Domestic Dates Produced or Packed in Riverside County, California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the California Date Administrative Committee (committee) for a decrease in the assessment rate established for the 2015–16 and subsequent crop years from $0.20 to $0.10 per hundredweight of dates handled. The committee locally administers the marketing order, which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The new assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 29, 2015. Comments received by December 28, 2015, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the

individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Terry.Vawter@ams.usda.gov* or *Martin.Engeler@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Riverside County, California, date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 2015, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established by the committee for the 2015–16 and subsequent crop years from $0.20 to $0.10 per hundredweight of dates.

The California date marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are date producers and handlers from Riverside County, California. They are familiar with the committee's needs and the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The committee met on June 25, 2015, and unanimously recommended 2015–16 expenditures of $59,250, and an assessment rate of $0.10 per hundredweight of Riverside County, California dates. In comparison, last year's budgeted expenditures were $56,200. The assessment rate of $0.10 is $0.10 lower than the rate currently in effect.

This year's crop is estimated to be slightly larger than last year's crop. Sufficient income is expected to be generated when applying the recommended lower assessment rate to the larger crop. When combined with carry-in funds from the 2014–15 crop year, funding should be sufficient to cover anticipated 2015–16 expenses. The financial reserve will also be maintained within the limit specified under the order.

The major expenditure recommended by the committee for the 2015–16 crop year is $59,250 for general and administrative expenses. In comparison, the major expenditures recommended by the committee for the 2014–15 crop year included $56,200 for general and administrative expenses, and $2,800 for contingency funds.

The assessment rate of $0.10 per hundredweight of dates handled was recommended by the committee after considering several factors: The anticipated size of the 2015–16 crop, the committee's estimates of the incoming reserve, other income, and anticipated expenses. Date shipments for the year are estimated at 29,000,000 pounds (290,000 hundredweight) which should provide $29,000 in assessment income. Income derived from handler assessments and funds from the committee's authorized reserve, should be adequate to cover budgeted expenses for the crop year.

Section 987.72(d) of the order states that the committee may maintain a monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. The committee expects to utilize $25,250 of the reserve during the year to cover expenses, leaving approximately $44,750 in the reserve account. The remaining reserve will be below the limit specified in the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2015–16 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf.

There are approximately 70 date producers in the production area and 11 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms as those whose annual receipts are less than $7,000,000. (13 CFR 121.201)

According to the National Agricultural Statistics Service (NASS), data for the most-recently completed crop year (2014) shows that about 3.54 tons, or 7,080 pounds, of dates were produced per acre. The 2014 producer price published by NASS was $1,190 per ton. Thus, the value of date production per acre in 2014–15 averaged about $4,213 (3.54 tons times $1,190 per ton). At that average price, a producer would have to farm over 178 acres to receive an annual income from dates of $750,000 ($750,000 divided by $4,213 per acre equals 178.02 acres). According to committee staff, the majority of California date producers farm less than 178 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. In addition, according to data from the committee staff, the majority of California date handlers have receipts of less than $7,000,000 and may also be considered small entities.

This rule decreases the assessment rate established by the committee and collected from handlers for the 2015–16 and subsequent crop years from $0.20 to $0.10 per hundredweight of dates handled. The committee unanimously recommended 2015–16 expenditures of $59,250 and an assessment rate of $0.10 per hundredweight of dates, which is $0.10 lower than the 2014–15 rate currently in effect. The quantity of assessable dates for the 2015–16 crop year is estimated at 29,000,000 pounds (290,000 hundredweight). Thus, the $0.10 rate should provide $29,000 in assessment income. Income derived from handler's assessments, and funds from the committee's authorized reserve, and other funds should be adequate to cover expenses for the 2015–16 crop year.

The major expenditure recommended by the committee for the 2015–16 crop year is $59,250 for general and administrative expenses. In comparison, the major expenditures recommended by the Committee for the 2014–15 crop year included $56,200 for general and administrative expenses and $2,800 for contingency funds.

The committee recommended a lower assessment rate because income generated from the lower assessment rate applied to the larger crop, combined with carry-in funds from the 2014–15 crop year, should be sufficient to cover anticipated 2015–16 expenses and to maintain a financial reserve within the limit specified under the order.

Section 987.72(d) of the order states that the committee may maintain a monetary reserve not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. The committee estimated a $70,000 reserve carry-in for the 2015–16 crop year. It expects to utilize $25,250 of the reserve during the year, for a carry-out of approximately $44,750, which is below the limit specified in the order.

The committee reviewed and unanimously recommended 2015–16 crop year expenditures of $59,250. Prior to arriving at this budget, the Committee considered alternative expenditure levels and assessment rates. The committee recommended an assessment rate of $0.10 per hundredweight of dates after considering several factors including the anticipated 2015–16 crop size, the committee's estimates of the incoming reserve funds and other income, and its anticipated expenses.

A review of historical and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2015–16 crop year could be approximately $60.00 per hundredweight of dates. Utilizing these estimates and the assessment rate of $0.10 per hundredweight, the estimated assessment revenue for the 2015–16 crop year as a percentage of total producer revenue is approximately 0.17 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and decreasing the assessment rate reduces the burden on handlers. In addition, the committee meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the June 25, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Industry members also discussed the various possible assessment rates, potential crop size, and estimated expenses at this meeting. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, ''Vegetable and Specialty Crop Marketing Orders.'' No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Riverside County, California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2015–16 crop year began on October 1, 2015, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the action decreases the assessment rate for assessable dates

beginning with the 2015–16 crop year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ 1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2015, an assessment rate of $0.10 per hundredweight is established for Riverside County, California dates.

Dated: October 22, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–27340 Filed 10–27–15; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 391

RIN 3064–AE24

Filing Requirements and Processing Procedures for Changes in Control With Respect to State Nonmember Banks and State Savings Associations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: On November 25, 2014, the FDIC published a notice of proposed rulemaking (proposed rule or NPR) to amend its filing requirements and processing procedures for notices filed under the Change in Bank Control Act (Notices). The comment period closed January 26, 2015, and no comments were received. The FDIC is now adopting that proposed rule as final with one change (final rule). The final rule accomplishes several objectives. First, the final rule consolidates into one subpart the current requirements and procedures for Notices filed with respect to State nonmember banks and certain parent companies thereof, and the requirements and procedures for Notices filed with respect to State savings associations and certain parent companies thereof. Second, the final rule rescinds the FDIC's separate regulation governing the requirements and procedures for Notices filed with respect to State savings associations and certain parent companies thereof and rescinds any guidance issued by the Office of Thrift Supervision (OTS) relating to changes in control of State savings associations that is inconsistent with the final rule. Third, the final rule adopts the best practices of the related regulations of the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board of Governors). Finally, the final rule clarifies the FDIC's requirements and procedures based on its experience interpreting and implementing the existing regulation. This final rule is also part of the FDIC's continuing review of its regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996.

DATES: The final rule is effective January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ann Johnson Taylor, Supervisory Counsel, *AJohnsonTaylor@fdic.gov;* Gregory S. Feder, Counsel, *GFeder@fdic.gov;* Rachel J. Ackmann, Counsel, *RAckmann@fdic.gov;* Robert C. Fick, Senior Counsel, *RFick@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Deposit Insurance Act (FDI Act) at section 7(j) (the Change in Bank Control Act) generally provides that no person may acquire control of an insured depository institution unless the person has provided the appropriate Federal banking agency prior written notice of the transaction and the banking agency has not objected to the proposed transaction.[1] Subpart E of Part 303 of the FDIC's rules and regulations [2] (Subpart E of Part 303) implements section 7(j) of the FDI Act and sets forth the filing requirements and processing procedures for Notices filed with respect to the proposed acquisition of State nonmember banks and certain parent companies thereof.[3]

The Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301, *et seq.* (Dodd-Frank Act), among other things, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. On July 21, 2011, (the ''transfer date'' established by section 311 of the Dodd-Frank Act), the powers, duties, and functions formerly assigned to, or performed by, the OTS were transferred to (i) the FDIC, as to State savings associations; [4] (ii) the OCC, as to Federal savings associations; and (iii) the Board of Governors, as to savings and loan holding companies.[5] Section 316(b) of the Dodd-Frank Act provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.[6] The section provides that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by each agency.[7] On June 14, 2011, the Board of Directors of the FDIC (the Board) approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act''. This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[8]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act granted the OCC rulemaking authority relating to savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the

[1] 12 U.S.C. 1817(j).

[2] 12 CFR 303.80 *et seq.*

[3] Certain industrial loan companies, trust companies, and credit card banks that are State nonmember banks under the FDI Act are not ''banks'' under the Bank Holding Company Act (''BHC Act''). 12 U.S.C. 1841(c)(2). Therefore, a company that seeks to control such an institution would not necessarily have to be a bank holding company under the BHC Act and would not have to be subject to supervision by the Board of Governors. However, such a company would have to file a Notice with, and obtain the approval of, the FDIC prior to acquiring such an institution.

[4] As of June 2015, there are approximately 50 State savings associations insured by the FDIC.

[5] 12 U.S.C. 5411.

[6] 12 U.S.C. 5414(b).

[7] 12 U.S.C. 5414(c).

[8] 76 FR 39246 (July 6, 2011).

''appropriate Federal banking agency'' or under similar statutory terminology.[9] Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act and designated the FDIC as the ''appropriate Federal banking agency'' for State savings associations.[10] As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it has in the final rule, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.[11]

As noted above, on June 14, 2011, operating pursuant to this authority, the Board reissued and redesignated certain regulations transferred from the former OTS. These regulations were adopted and issued as new FDIC regulations at Parts 390 and 391 of Title 12. When it republished these regulations as new FDIC regulations, the FDIC specifically noted that staff would evaluate the transferred regulations and might later recommend amending them, rescinding them, or incorporating the transferred regulations into other FDIC rules as appropriate.

Certain of the regulations transferred to the FDIC govern acquisitions of State savings associations under the Change in Bank Control Act (transferred CBCA regulation).[12] The FDIC is incorporating portions of those regulations into the FDIC's Subpart E of Part 303 and rescinding the transferred CBCA regulation. In addition to consolidating and conforming the change in control regulations for both State nonmember banks and State savings associations, the final rule increases the consistency of Subpart E of Part 303 with the OCC's and the Board of Governors' related regulations by incorporating certain best practices of those regulations into Subpart E of Part 303.[13] Also, the FDIC is generally updating Subpart E of Part 303 to provide greater transparency to its change in control regulation based on its experience interpreting and implementing the Change in Bank Control Act.

II. Proposed Rule

On November 25, 2014, the FDIC published the NPR, which proposed amending the FDIC's filing requirements and processing procedures for Notices.[14] The FDIC did not receive any comments on the proposed rule and is now adopting the proposed rule as final with only one modification.

III. Final Rule

a. Section 303.80 Scope

The scope of the final rule makes it clear that Subpart E of Part 303 applies to acquisitions of control of State nonmember banks, State savings associations, and certain companies that control one or more State nonmember banks and/or State savings associations (parent companies). The FDIC believes that expanding the scope of Subpart E of Part 303 to include State savings associations and certain parent companies[15] and rescinding the transferred CBCA regulation both streamlines its rules and procedures and increases regulatory consistency for all FDIC-supervised institutions. To that end, the final rule defines the term ''covered institution'' to include an insured State nonmember bank, an insured State savings association, and certain companies that control, directly or indirectly, an insured State nonmember bank or an insured State savings association.

In addition, the final rule amends the scope of Subpart E of Part 303 to indicate that the subpart implements the Change in Bank Control Act[16] and to clarify that the subpart includes the procedures for filing and processing a Notice. The revised scope section also sets forth the circumstances that require the filing of a Notice.

b. Section 303.81 Definitions

1. Acting in Concert

The final rule defines ''acting in concert'' as ''knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a covered institution whether or not pursuant to an agreement.'' This definition is not substantively different from the definition of ''acting in concert'' in the existing Subpart E of Part 303.[17] The only modification is updated terminology. Specifically, the modification replaces the term ''insured state nonmember bank or a parent company'' with ''covered institution'' to reflect that the FDIC is also the appropriate Federal banking agency for State savings associations. The FDIC does not believe any further modifications are necessary. The FDIC has not adopted the comparable definition from the transferred CBCA regulation because the definition in the existing Subpart E of Part 303 is broad enough to include the specific circumstances described in the transferred CBCA regulation and is clear and easy to understand.[18]

The FDIC notes that a group of persons acting in concert becomes a different group of persons acting in concert when a member of the group leaves or a new member joins. For example, if certain members of a family have previously filed a Notice with, and received a non-objection from, the FDIC as a group acting in concert, each member of the group must file a new Notice and obtain the FDIC's non-objection when a member of the group ceases participation in the group, and the group continues to hold sufficient shares to constitute ''control.''

The FDIC also notes that if a person who is a member of a group acting in concert proposes to acquire voting securities that result in that person holding 25 percent or more of the voting securities in his/her/its own right, then the person must file a Notice with the FDIC because that person individually will have acquired control as defined by the Change in Bank Control Act. Such a person must file a Notice even if that person had already filed and been approved as a member of the group acting in concert.

The FDIC further notes that it will look closely at transactions where a lead investor has a material role in organizing a bank's capital offering. The presence of a lead investor(s) who solicits persons with whom the lead investor has a pattern of co-investing suggests that the solicited investors, together with the lead investor, may constitute a group acting in concert. The FDIC will analyze the facts and circumstances of each case to determine whether such persons constitute a group acting in concert.

2. Company

As discussed in section III.c.3 below, the final rule adds certain rebuttable presumptions of acting in concert, including presumptions relating to companies. The final rule defines the term ''company'' by reference to section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) (BHC Act) and includes a catch-all for any person that is not an individual or group of individuals acting in

[9] 12 U.S.C. 5412(b)(2)(B)(i)(II).

[10] 12 U.S.C. 1813(q).

[11] 12 U.S.C. 1819(a)(Tenth).

[12] 12 CFR part 391, subpart E, entitled *Acquisitions of Control of State Savings Associations.*

[13] 12 CFR 5.50 *et seq.* (OCC) and 12 CFR 225.41–.43 (Board of Governors).

[14] 79 FR 70121 (Nov. 25, 2014).

[15] A company that is not a bank holding company nor a savings and loan holding company and that seeks to acquire a State savings association that operates solely in a fiduciary capacity would not be subject to supervision by the Board of Governors. Such a company would have to file a Notice with, and obtain the approval of, the FDIC.

[16] The final rule uses language adopted from the transferred CBCA regulation.

[17] *See* 12 CFR 303.81(b).

[18] *See* 12 CFR 391.41 for the definition of acting in concert in the transferred CBCA regulation.

concert, for example, a limited liability company.

3. Control

The final rule defines ''control'' as ''the power, directly or indirectly, to direct the management or policies of a covered institution or to vote 25 percent or more of any class of voting securities of a covered institution.'' This definition is not substantively different from the definition of ''control'' in the existing Subpart E of Part 303.[19] The only modification is updated terminology, *i.e.,* replacing ''voting shares'' with ''voting securities'' and replacing ''insured state nonmember bank or a parent company'' with ''covered institution'' to reflect that the FDIC is also the appropriate Federal banking agency for State savings associations and certain parent companies thereof. The final rule does not adopt the enumerated conditions in the definition of control from the transferred CBCA regulation because the definition of ''control'' in the final rule is broad enough to include such conditions and enumerating some of the conditions that are probative of control could be read to exclude others.[20]

4. Convertible Securities

As discussed in section III.c.4, the final rule includes a presumption relating to convertible securities. The final rule defines ''convertible securities'' as debt or equity interests that may be converted into voting securities. The definition is not in the existing Subpart E of Part 303 or the transferred CBCA regulation, but convertible securities are not uncommon in the industry, and the FDIC's regulations will now reflect this fact.[21]

5. Covered Institution

The final rule defines the term ''covered institution'' as ''an insured State nonmember bank, an insured State savings association, and any company that controls, directly or indirectly, an insured State nonmember bank or an insured State savings association other than a holding company that is the subject of an exemption described in either section 303.84(a)(3) or (a)(8).'' Therefore, the final rule could apply to an individual's acquisition of voting securities of a bank holding company or savings and loan holding company, provided the transaction is not otherwise exempted under 303.84(a)(3) or (a)(8). Subsections (a)(3) and (a)(8) exempt transactions that are subject to Section 3 of the BHC Act and transactions for which the Board of Governors reviews a Notice. The 303.84(a)(3) and (a)(8) exemptions are discussed in section III.e.3 and 8.

The Board of Governors is not the primary regulator of all companies that control State nonmember banks since some State nonmember banks are not ''banks'' under the BHC Act.[22] Also, the Board of Governors is not the primary regulator of all companies that control State savings associations. Under the Home Owners' Loan Act,[23] ''a company that controls a savings association that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956'' is not a savings and loan holding company.[24] As a result, a company that is not otherwise a bank holding company or a savings and loan holding company and that seeks to acquire control of either a State nonmember bank that is not a ''bank'' under the BHC Act or a State savings association that functions solely in a trust or fiduciary capacity is subject to the final rule and is not be eligible for the exceptions from Notice in 303.84(a)(3) and (a)(8).

6. Immediate Family

As discussed in section III.c.3 below, the final rule adds certain rebuttable presumptions of acting in concert, including a presumption relating to a person's immediate family. The final rule defines ''immediate family'' as ''a person's parents, mother-in-law, father-in-law, children, step-children, siblings, step-siblings, brothers-in-law, sisters-in-law, grandparents, and grandchildren, whether biological, adoptive, adjudicated, contractual, or de facto; the spouse of any of the foregoing; and the person's spouse.'' This definition is similar to the definitions of ''immediate family'' in the OCC's and the Board of Governors' related regulations.[25] The FDIC's final rule interprets the term ''spouse'' to include any formalized domestic relationship, for example, through civil union or marriage. The final rule does not adopt the definition of ''immediate family'' in the transferred CBCA regulation because that definition does not include an acquirer's grandparents or step-relatives.[26] The FDIC believes that these relations typically have a natural tendency to engage in joint or parallel action to preserve or enhance the value of the family's investment(s).

The FDIC would interpret the term ''sibling'' as one of two or more individuals having at least one common parent.

7. Person

The final rule defines ''person'' as ''an individual, corporation, limited liability company (LLC), partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust, or any other form of entity; and includes each party to a voting agreement and any group of persons acting in concert.'' The final rule does not adopt the definition of ''person'' in the transferred CBCA regulation and instead includes an amended version of the definition from the existing Subpart E of Part 303 because the definition from the existing Subpart E of Part 303 more closely tracks the definition of person in the Change in Bank Control Act.[27] The final rule amends the definition from the existing Subpart E of Part 303 to explicitly include limited liability companies as persons. The FDIC believes that limited liability companies are more common in the industry than when the statute was enacted in 1978 and therefore merit express recognition as ''persons''. The final rule also makes a number of technical edits. For example, to be grammatically correct, the final rule moves ''voting trust'' to the enumerated list of entities.

8. Management Official

As discussed in section III.c.3 below, the final rule includes a new presumption of acting in concert relating to a company and its controlling shareholder or management official. The final rule defines management official as ''any officer, LLC manager, director, partner, or trustee of an entity, or other person with similar functions and powers with respect to a covered institution.'' This definition is substantively identical to the definition previously adopted by the Board of Governors;[28] the only modification, beyond updated terminology, is the inclusion of the term ''LLC manager'' to recognize the prevalence of limited liability companies in the industry.[29]

[19] *See* 12 CFR 303.81(c).

[20] *See* 12 CFR 391.43(a)(1).

[21] *See* 12 CFR 225.31(d)(1).

[22] 12 U.S.C. 1841(c)(2).

[23] 12 U.S.C. 1467a.

[24] 12 U.S.C. 1467a(a)(1)(D)(ii)(II).

[25] *See* 12 CFR 5.50(d)(4) (OCC) and 12 CFR 225.41(b)(3) (Board of Governors).

[26] *See* 12 CFR 391.41.

[27] *Compare* 12 CFR 391.41 and 12 CFR 303.81(e) *with* 12 U.S.C. 1817(j)(8)(A).

[28] *See* 12 CFR 225.2(i).

[29] The updated terminology replaces ''a bank or other company'' with the term ''entity'' and replaces the term ''employee'' with the term ''person''. The OCC recently adopted a definition of

Continued

Generally, the final rule treats members of an LLC who are not managers similar to shareholders in a corporation. The final rule does not adopt the definition of ''management official'' from the transferred CBCA regulation because the final rule's definition is a more accurate description of the persons intended to be covered by the presumption.

9. Voting Securities

Unlike the existing Subpart E of Part 303, the final rule includes a definition of ''voting securities''. Including a definition of ''voting securities'' makes the final rule more consistent with the OCC's and the Board of Governors' related regulations. The final rule defines ''voting securities'' as shares of common or preferred stock, general or limited partnership shares or interests, membership interests, or similar interests if the shares or interests, by statute, charter, or in any manner, entitle the holder: (i) To vote for, or to select, directors, trustees, managers of an LLC, partners, or other persons exercising similar functions of the issuing entity; or (ii) to vote on, or to direct, the conduct of the operations or significant policies of the issuing entity. The final rule further states that shares of common or preferred stock, limited partnership shares or interests, membership interests, or similar interests are not ''voting securities'' if: (i) Any voting rights associated with the shares or interests are limited solely to the type customarily provided by State statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing entity, or the payment of dividends by the issuing entity when preferred dividends are in arrears; (ii) the shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing entity; and (iii) the shares or interests do not entitle the holder, by statute, charter, or in any manner, to select, or to vote for the selection of, directors, trustees, managers of an LLC, partners, or persons exercising similar functions of the issuing entity. The definition of ''voting securities'' also states that voting securities issued by a single issuer are deemed to be the same class of voting securities, regardless of differences in dividend rights or liquidation preference, if the securities are voted together as a single class on all matters for which the securities have voting rights, other than rights that affect solely the rights or preferences of the securities.

The definition derives from the Board of Governors' definition of ''voting securities'' with a few minor modifications.[30] For example, unlike the Board of Governors' definition, the definition adopted by the FDIC explicitly references LLCs and managers thereof. Additionally, the definition provides for the existence of nonvoting common stock in addition to nonvoting preferred stock. Similar to the Board of Governors' definition, the final rule excludes nonvoting preferred stock that includes the right to elect or appoint directors upon failure of the covered institution to pay preferred dividends from the definition of voting securities until such time as the right to vote or appoint directors arises. Once the right to vote for or appoint directors arises, such non-voting preferred stock would become voting securities. Again, the final rule does not adopt the definition of ''voting securities'' from the transferred CBCA regulation because the definition in the final rule is a more accurate definition of the securities that could trigger application of the Change in Bank Control Act.

10. Other Definitions

The final rule does not define ''acquisition'' as does existing Subpart E of Part 303. The final rule also does not adopt several other definitions in the transferred CBCA regulation. For example, the terms ''State savings association'' and ''affiliate'' are also not defined in the final rule as those terms are defined in the FDI Act. The FDIC is not adopting these definitions because they were determined to be unnecessary or are statutorily defined in the FDI Act.

c. Section 303.82 Transactions That Require Prior Notice

1. Section 303.82(a) Prior Notice Requirement

The proposed rule asked whether the FDIC should continue to exempt all future acquisitions of voting securities of an institution once a person has acquired control in compliance with the procedures from the Change in Bank Control Act. Such a change would make the final rule more consistent with the OCC and the Board of Governors who reserve the right to limit a person's future acquisition of voting securities. As noted above, the FDIC received no comments on this question or any other aspect of the proposed rule and has decided to limit the scope of that exemption in the final rule consistent with the regulations of the OCC and the Board of Governors.[31]

Specifically, the final rule requires persons previously approved to acquire control to file a second prior Notice in certain circumstances. Similar to the proposed rule, the final rule requires any person, whether acting directly or indirectly, alone or in concert with others, to give the FDIC prior written notice before the acquisition of control of a covered institution, unless the acquisition is exempt.[32] However, the final rule provides that unless waived by the FDIC, a person who has been approved to acquire control of a covered institution and who has maintained that control must file a second Notice before any acquisition that would increase a person's ownership, control, or power to vote from less than 25 percent to 25 percent or more of any class of voting securities of the covered institution. The FDIC may waive this requirement if it is in the public interest and consistent with the purposes of the CBCA and the FDI Act.

2. Section 303.82(b)(1) Rebuttable Presumption of Control

The final rule includes a rebuttable presumption of control that generally applies whenever a person's acquisition would result in that person owning or controlling 10 percent or more of a class of voting securities of a covered institution, and either (1) the institution has issued any class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, or (2) immediately after the transaction, no other person will own a greater proportion of that class of voting securities. The final rule removes from existing Subpart E of Part 303 the provision that if two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of a covered institution, each such person shall file a prior Notice with the FDIC. The final rule clarifies the FDIC's policy by removing the implication that the

''management official'', although the OCC's definition of the term is not substantially identical to the Board of Governors' definition. 80 FR 28346 (May 18, 2015).

[30] *See* 12 CFR 225.2(q)(1).

[31] 12 CFR 5.50(c)((2)(ii) and 12 CFR 225.42(a)(2).

[32] *See* 12 CFR 303.82(a) and 12 CFR 391.42(b). The FDIC notes that section 391.42(b) of the transferred CBCA regulation includes two specific exceptions (one for certain persons affiliated with a savings and loan holding company and one for mergers with interim companies) that are not explicitly stated in this section of the final rule. These exceptions are statutory and included in the rule in section 303.84.

largest shareholders only have to file a Notice if they simultaneously acquire the voting securities. By removing that provision, the final rule makes it clear that if two or more shareholders each propose to acquire an equal percentage of any class of voting securities where that percentage is 10 percent or more and where no other shareholder will own or control a greater percentage of that class of voting securities, then each such acquirer must file a Notice. The timing of each shareholder's acquisition is irrelevant.

The transferred CBCA regulation also includes a rebuttable presumption of control, but the presumption is triggered only if there exists one of the enumerated control factors.[33] The enumerated control factors include factors such as that the acquirer would be one of the two largest holders of any class of voting stock; the acquirer would hold 25 percent or more of the total stockholders' equity; the acquirer would hold more than 35 percent of the combined debt securities and stockholders' equity; or the acquirer and/or the acquirer's representatives or nominees would constitute more than one member of the institution's board of directors.[34] The final rule does not include any control factors as additional elements to the rebuttable presumption of control. The FDIC notes that the enumerated control factors represent only some of the circumstantial factors that the FDIC analyzes when determining whether a person will acquire the ability to direct the management or policies of a covered institution. The FDIC believes that the determination of whether a person will acquire the power to direct the management or policies of an institution is dependent on the facts and circumstances of the case and that it is impractical and potentially misleading to attempt to list all such factors.

It is also noted that the Board of Governors has issued a policy statement entitled *Policy Statement on Equity Investments in Banks and Bank Holding Companies* regarding the interpretation of the BHC Act.[35] The policy statement generally provided certain guidance regarding the amount of total equity a person can control without the Board of Governors determining that the person has the ability to exercise a controlling influence over the management or policies of a banking organization. A person who acquires total equity in excess of the amount proscribed in that guidance would likely have to file an application under the BHC Act. The FDIC has found the logic of the policy statement useful in analyzing fact patterns under the Change in Bank Control Act, but has not adopted that policy statement pending further consideration.

The proposed rule asked to what extent and under what circumstances would the control of one-third or more of a covered institution's total equity give such a person the power to direct the management or policies of a covered institution. As noted above, no comments were received on the proposed rule. Pending further consideration, the FDIC has determined not to adopt a presumption that the power to control a covered institution for purposes of the Change in Bank Control Act exists at one-third of an institution's total equity. Instead, the FDIC will continue to review such issues based on the facts and circumstances of each case.

The existing Subpart E of Part 303 states that ownership interests other than those set forth in the rebuttable presumption of control and that represent less than 25 percent of a class of an institution's voting shares do not constitute control for purposes of the Change in Bank Control Act.[36] The final rule does not include this provision because the provision has been a source of confusion regarding the meaning of the term ''control''. The FDIC has occasionally addressed questions regarding this provision and now seeks to clarify in the final rule that the definition of ''control'' includes two standards: One based on the amount of voting securities controlled by a person and the other based on a facts-and-circumstances analysis of whether a person has the power to direct the management or policies of a covered institution. The FDIC notes that the change does not expand the thresholds in the rebuttable presumption of control, but only removes the potential ambiguity regarding whether the facts and circumstances alone could support a conclusion that a person will control the institution. Such a facts-and-circumstances analysis is consistent with both the statutory definition of ''control'' in the Change in Bank Control Act and the FDIC's long-standing practices.

3. Section 303.82(b)(2) Rebuttable Presumptions of Acting in Concert

The final rule includes new rebuttable presumptions of acting in concert. The acting in concert presumptions included in the final rule are generally derived from the rebuttable presumptions of acting in concert in the Board of Governors' regulations.[37] The OCC recently adopted presumptions consistent with the Board of Governors' presumptions of acting in concert.[38]

The final rule includes an acting in concert presumption with respect to a company and any controlling shareholder or management official of that company. If both the company and controlling shareholder or management official will own or control voting securities of a covered institution, then the FDIC will presume that the company and the controlling shareholder or management official are acting in concert.

Second, the final rule includes an acting in concert presumption between an individual and one or more members of the individual's immediate family. If two or more members of an immediate family will own or control voting securities of a covered institution, then the FDIC will presume that those persons are acting in concert. The definition of immediate family is discussed in section III.b.5 above.

The final rule also includes presumptions of acting in concert between (i) two or more companies under common control or a company and each other company it controls; (ii) persons that have made or propose to make a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934;[39] and (iii) a person and any trust for which the person serves as trustee or any trust for which the person is a beneficiary.

The final rule also includes a presumption that persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a covered institution, other than through revocable proxies as described in 303.84(a)(5), are presumed to be acting in concert. The FDIC has included these presumptions in the final rule because the interests of such

[33] 12 CFR 391.43(b).

[34] 12 CFR 391.43(c).

[35] *See http://www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm.*

[36] 12 CFR 303.82(d).

[37] 12 CFR 225.41(d).

[38] 80 FR 28346 (May 18, 2015).

[39] Section 13 of the Securities Exchange Act of 1934 (the ''Exchange Act'') requires the filing of timely and accurate annual and periodic reports, and Section 14 of the Exchange Act requires the filing of proxy materials. For purposes of the reporting provisions of section 13(g), section 13(g)(3) provides that two or more persons acting ''as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a ''person'' for the purposes of'' section 13(g)''. Section 14 has a similar reporting provision for such persons.

parties are so aligned that there exists a natural tendency to act together toward such a common goal.

The transferred CBCA regulation includes a presumption of acting in concert for a company that provides certain financial assistance to a controlling shareholder or management official of such company to enable the purchase of a State saving association's stock.[40] The FDIC believes that such situations are included within the presumption regarding a company and any controlling shareholder or management official of that company. The transferred CBCA regulation also includes a presumption of acting in concert when one person provides credit to, or is instrumental in obtaining financing for, another person to purchase stock of a covered institution.[41] The FDIC does not believe this situation, by itself, aligns persons' interests to an extent sufficient to warrant a presumption of acting in concert. Accordingly, the final rule does not include that presumption. However, the FDIC notes that providing or facilitating the financing for another person to purchase stock would be relevant evidence of acting in concert that in combination with other facts and circumstances may result in a determination that those persons are acting in concert.

4. Section 303.82(b)(3) Convertible Securities, Options, and Warrants

The final rule includes a rebuttable presumption that an acquisition of convertible securities, options, and warrants is presumed to constitute the acquisition of voting securities as if the conversion already occurred or the options or warrants were already exercised. The existing Subpart E of Part 303 does not explicitly include such a presumption; however, the transferred CBCA regulation, and the related regulations of the Board of Governors, treat such securities in a similar manner. The FDIC's longstanding position is that the acquisition of an option or warrant constitutes the acquisition of the underlying voting securities for purposes of the Change in Bank Control Act even if they may only be exercised after a period of time. The FDIC also believes that nonvoting interests that may be converted into voting securities at the election of the holder of the convertible securities, or that convert after the passage of time, should be considered voting securities at all times for purposes of the Change in Bank Control Act. However, the FDIC recognizes that nonvoting securities that are convertible into voting securities carry less influence when the nonvoting securities may not be converted into voting securities in the hands of the investor and may only be converted after transfer by the investor: (i) In a widespread public distribution; (ii) in transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of any class of voting securities of the banking organization; or (iii) to a transferee that would control more than 50 percent of the voting securities of the banking organization without any transfer from the investor. The FDIC would generally consider such convertible securities as nonvoting equity.

5. Section 303.82(b)(4) Rebuttal of Presumptions

The procedures for rebutting a presumption of control remain unchanged from the existing Subpart E of Part 303.[42] The final rule does not include the detailed procedures for rebutting the presumptions included in the transferred CBCA regulation because the FDIC believes that the variety of the facts and circumstances often encountered dictate the more flexible process embodied in the existing Subpart E of Part 303.[43]

6. Section 303.82(c) Acquisition of Loans in Default

The final rule provides that an acquisition of a loan in default that is secured by voting securities of a covered institution is deemed to be an acquisition of the underlying voting securities. This treatment is not substantively different from the treatment of a loan in default secured by voting securities in the existing Subpart E of Part 303;[44] however, the final rule is not identical to existing Subpart E of Part 303. The FDIC has received questions about the use of the term ''presumes'' in Subpart E of Part 303 and whether the presumption is rebuttable. As the presumption is not rebuttable, the final rule clarifies this issue by stating that such acquisitions are ''deemed'' to be an acquisition of the underlying voting securities for purposes of the Change in Bank Control Act.

7. Transferred CBCA Regulation's Safe Harbor

Notwithstanding any other provisions in the transferred CBCA regulation, the ''Safe Harbor'' provision permits an acquirer of an otherwise controlling interest in a State savings association to avoid filing a Notice if the acquirer has no intention of participating in, or seeking to exercise control over, a State savings association's management or policies.[45] To qualify for the safe harbor, the acquirer must make certain certifications to the FDIC. The final rule does not include this regulatory safe harbor. The FDIC believes that any certifications or passivity commitments executed in connection with an acquisition of voting securities must be tailored to the facts and circumstances of each situation and a fixed set of certifications would not likely capture the variety of circumstances presented in such situations.

d. Section 303.83 Transactions That Require Notice, but Not Prior Notice

Existing Subpart E of Part 303 and the transferred CBCA regulation do not require prior Notice for the acquisition of voting securities for certain types of acquisitions. For example, both regulations permit a person acquiring voting securities through inheritance or bona fide gift to provide Notice within 90 calendar days after the acquisition. Existing Subpart E of Part 303 and the transferred CBCA regulation, however, differ materially in what transactions are eligible for an after-the-fact Notice and the limitations imposed on the acquirer before receiving a non-objection. As discussed in detail below, the final rule materially amends existing Subpart E of Part 303 by incorporating several aspects of the transferred CBCA regulation.[46]

1. Section 303.83(a)(1)

The final rule, like the existing Subpart E of Part 303 and the transferred CBCA regulation, provides that acquisitions through bona fide gift that result in control of an institution requires the acquirer to provide Notice to the FDIC within 90 days after the acquisition.

2. Section 303.83(a)(2)

The final rule, as does the existing Subpart E of Part 303, provides that the acquisition of voting securities in satisfaction of a debt previously contracted for in good faith that would otherwise require prior Notice requires the acquirer to provide Notice to the FDIC within 90 days after the acquisition. (Note that the acquisition of a defaulted loan secured by an amount of a covered institution's voting securities that would result in the acquirer holding a controlling amount of

[41] 12 CFR 391.43(d)(3)(ii).

[42] *See* 12 CFR 303.82(e).

[43] *See* 12 CFR 391.43(e).

[44] *See* 12 CFR 303.82(c).

[45] 12 CFR 391.43(f).

[46] *See* 12 CFR 303.83(b) and 12 CFR 391.42(d).

the institution's voting securities requires prior Notice).[47] The transferred CBCA regulation creates separate Notice requirements for such acquisitions based on whether the loan was made in the ordinary course of business for the lender; however, the FDIC does not believe that distinction warrants separate Notice procedures, and therefore, the FDIC has not adopted such separate Notice requirements.

3. Section 303.83(a)(3)

The final rule, as does existing Subpart E of Part 303, permits an acquirer to provide Notice to the FDIC within 90 days after the acquisition of voting securities through an inheritance where the acquisition would result in the acquirer holding a controlling amount of the institution's voting securities. The final rule provides a slightly longer period for filing a Notice than the transferred CBCA regulation. The transferred CBCA regulation provides a sixty-day Notice period for State savings associations.[48] In the final rule, acquirers of State savings associations or parent companies of State savings associations have the same timeframe (90 days after the acquisition) as acquirers of State nonmember banks or parent companies of State nonmember banks.

4. Section 303.83(b)(1)

The final rule, like the existing Subpart E of Part 303 and the transferred CBCA regulation, permits the filing of a Notice within 90 days after being notified of a redemption of voting securities that results in the acquisition of control of the covered institution.The final rule is substantively the same as existing Subpart E of Part 303. The difference relates to a change in regulatory language to reflect that a person might acquire control without acquiring additional voting securities when a covered institution redeems voting securities. For example, if the two largest shareholders hold 23 and 21 percent of a covered institution's voting securities, and the covered institution redeems all of the voting securities held by the person with 23 percent, the person with 21 percent would have to file a Notice. As such, the final rule uses the term ''acquisition of control'' instead of ''a percentage increase in voting securities''. The transferred CBCA regulation provides different Notice procedures for redemptions based on whether the redemption is pro rata or is not pro rata.[49] The FDIC does not believe the distinction between types of redemptions merits varying Notice procedures. Accordingly, the final rule provides that if a person acquires control of a covered institution as a result of a redemption, that person has 90 days after receiving notice of the transaction to provide Notice to the FDIC.

5. Section 303.83(b)(2)

Existing Subpart E of Part 303 permits a person to provide the FDIC Notice within 90 days after receiving notice of a sale of shares by any shareholder that is not within the control of a person and which results in that person becoming the largest shareholder.[50] The final rule revises this provision. Under the final rule, if a person gains control as a result of any third-party event or action that is not within the control of the person acquiring control, that person must file a Notice within 90 days of receiving notice of such action. This provision, similar to the catch-all in the transferred CBCA regulation, is intended to provide a broader exemption from prior Notice requirements than an exemption based solely on an acquisition of control arising from the sale of securities which results in the acquirer becoming the largest shareholder.[51] The FDIC also interprets the catch-all to include any transfer that results from the operation of law. For example, some trustees are appointed by operation of law or in the course of a bankruptcy proceeding. Under the final rule, such a trustee must provide the FDIC with a Notice within 90 days after the trustee is appointed and acquires control of a covered institution. This provision codifies long-standing FDIC policy. The FDIC notes that if the person acquiring control causes the third-party event or action, then prior Notice is required.

6. Section 303.83(c)

The final rule expressly provides that the FDIC may disapprove a Notice filed after-the-fact and that nothing in section 303.83 limits the FDIC's authority to disapprove a Notice. Existing Subpart E of Part 303 includes this provision with respect to acquisitions of control of State nonmember banks and certain parent companies of State nonmember banks; the final rule also applies this provision to acquisitions of control of State savings associations and certain parent companies of State savings associations.

7. Section 303.83(d)

The final rule explicitly states that the relevant information that the FDIC may require under this section may include all of the information typically required for a prior Notice. The relevant information may include, without limitation, all the information requested by the Interagency Notice of Change in Control form and the Interagency Biographical and Financial Report. This provision is not in existing Subpart E of Part 303, but is included in the final rule for transparency and to codify long-standing FDIC policy.

8. Section 303.83(e)

The final rule expressly states that if the FDIC disapproves a Notice, then the notificant must divest control of the covered institution which may include, without limitation, disposing of some or all of the voting securities so that the notificant(s) is no longer in control of the covered institution. This provision is not in existing Subpart E of Part 303, but is included in the final rule for clarity and to codify long-standing FDIC policy.

9. Additional Transferred CBCA Regulation Provisions Not Included

In addition to the provisions discussed above, the final rule does not include the express caveat that transactions eligible for after-the-fact Notice are only eligible for after-the-fact Notice provided that the timing of the transaction is outside the control of the notificant. The FDIC does not believe that it is necessary to state explicitly such a restraint on eligibility for an after-the-fact Notice because failure to comply with the statutory or regulatory provisions may subject the acquirer to liability. As a result, the FDIC has historically interpreted the exceptions to prior Notice as including this restraint.

e. Section 303.84 Transactions That Do Not Require Notice

1. Section 303.84(a)(1)

Section 303.84(a)(1) includes grandfather provisions for long-held control interests in covered institutions. Under section 303.84(a)(1)(i), Notice is not required when a person acquires additional voting securities of covered institution if the person held the power to vote 25 percent or more of any class of voting securities continuously since the later of March 9, 1979, or the date the institution commenced business. This exemption from Notice requirements is not substantively different from the exemption in the

[47] *See* section 303.82(c).

[48] 12 CFR 391.42(d)(1)(v).

[49] 12 CFR 391.42(d)(1)(iii).

[50] 12 CFR 303.83(b)(2)(ii).

[51] *See* 12 CFR 391.42(d)(1)(iv).

existing Subpart E of Part 303 and only updates terminology.[52]

The transferred CBCA regulation has a substantively identical exemption to 303.84(a)(1)(i) in the final rule for persons that have previously held the power to vote 25 percent or more of any class of voting securities continuously since March 9, 1979; however, it does not exempt persons who held the power to vote 25 percent or more of any class of voting securities since the date the savings association commenced business.[53] The final rule, however, exempts such an acquisition. As such, compared to the transferred CBCA regulation, the final rule expands the Notice exemptions for persons who held the power to vote 25 percent or more of any class of voting securities since the date the savings association commenced business. The FDIC believes this expansion makes the change in control requirements more uniform and consistent among State savings associations, State nonmember banks, and certain parent companies of either. In general, the FDIC does not believe significant reasons exist to treat acquisitions of control of State savings associations or parent companies thereof differently, in this respect, than acquisitions of control of State nonmember banks and parent companies thereof, and, by issuing this final rule, has tried to make their treatment as uniform as possible. Furthermore, because shareholders who have held over 25 percent of the voting securities since the commencement of a State savings association were likely reviewed by the FDIC when the institution acquired its charter and deposit insurance, generally, the FDIC does not believe that the same shareholders need to be reviewed a second time when they acquire additional voting securities.

Under section 303.84(a)(1)(ii), Notice is not required when a person who is presumed to have controlled a covered institution continuously since March 9, 1979, acquires additional voting securities of an institution provided that the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities, or the FDIC has determined that the person has continuously controlled the institution since March 9, 1979.[54] The final rule does not amend this exemption for State nonmember banks or certain parent companies thereof. The transferred CBCA regulation included a similar provision, except with a grandfather date of December 26, 1985.[55] The final rule does not include the grandfather date from the transferred CBCA regulation; rather it adopts the same grandfather provisions for State savings associations as are applicable for State nonmember banks. This treatment generally reflects the FDIC's position that acquirers of State savings associations should be treated in a similar manner to acquirers of State nonmember banks. In addition, this treatment is consistent with the OCC's treatment of Federal savings associations.[56]

2. Section 303.84(a)(2)

The existing Subpart E of Part 303 and the transferred CBCA regulations exempt from Notice requirements certain persons who have controlled a covered institution in compliance with the procedures of the Change in Bank Control Act or the repealed Change in Savings and Loan Control Act, or any regulations issued under either act, and who acquires additional voting securities.[57] The final rule retains this exemption, with an exception for a notice that is required by a person who increases their ownership as provided in 12 CFR 303.82(a)(2). As noted above, both the OCC and the Board of Governors reserve the right to limit the future acquisitions of a person who has once been approved to acquire control.

3. Section 303.84(a)(3)

Under the Change in Bank Control Act and both the existing Subpart E of Part 303 and the transferred CBCA regulation, acquisitions of voting securities that are subject to approval under section 3 of the BHC Act,[58] section 18(c) of the FDI Act,[59] or section 10 of the Home Owners' Loan Act[60] are exempt from Notice requirements. These are statutory exemptions and are included in the final rule for clarity.[61]

4. Section 303.84(a)(4)

The existing Subpart E of Part 303 exempts from Notice requirements those transactions that are exempt under the BHC Act including, foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies described in sections 2(a)(5), 3(a)(A), or 3(a)(B), respectively, of the BHC Act, 12 U.S.C. 1841(a)(5), 1842(a)(A), and 1842(a)(B).[62] The final rule includes these exemptions, but does not include the text preceding the statutory references. The text, ''foreclosures by institutional lenders, fiduciary acquisitions by banks, and increases of majority holdings by bank holding companies'' is removed for clarity only; no substantive change is intended or effected. Intended as shorthand references to the subject matter of the statutory provisions, the text has generated confusion regarding its proper interpretation in that it could be interpreted as limiting the scope of those statutory references. In order to eliminate that confusion, the FDIC has deleted the text. Consequently, the final rule provides that any transaction described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the BHC Act by a person described in those provisions is exempt from Notice requirements.

5. Section 303.84(a)(5)

The existing Subpart E of Part 303 exempts a customary one-time proxy solicitation from the Notice requirements.[63] The final rule technically modifies this exemption by expressly limiting its applicability to only revocable proxies, which is in line with long-standing FDIC interpretation. This exemption is applicable any time revocable proxies are solicited for a single meeting of a covered institution. This exemption does not cover irrevocable proxies or revocable proxies that do not terminate within a reasonable period after the meeting. The transferred CBCA regulation does not include a similar exemption for the one-time solicitation of revocable proxies. However, the FDIC believes that this exemption is just as appropriate for state savings associations as it is for state nonmember banks, and the final rule extends this exemption to State savings associations.

6. Section 303.84(a)(6)

The existing Subpart E of Part 303 also exempts from Notice requirements the receipt of voting shares through a pro rata stock dividend.[64] The transferred CBCA regulation has a similar exemption, but extends the exemption to stock splits, if the

[52] *See* 12 CFR 303.83(a)(1)(i).

[53] 12 CFR 391.42(c)(2)(v)(A) and (B).

[54] 12 CFR 303.83(a)(1)(ii).

[55] The difference in the grandfather date is due to a difference in when the presumptions in the transferred CBCA regulation and Existing Subpart E of Part 303 became effective. The FDIC does not anticipate many persons, if any, would be affected by the March 9,1979 grandfather date for State savings associations.

[56] 12 CFR 5.50(c)(2).

[57] 12 CFR 303.83(a)(2) and 391.42(c)(2)(v).

[58] 12 U.S.C. 1842 *et seq.*

[59] 12 U.S.C. 1828(c).

[60] 12 U.S.C. 1467b.

[61] 12 U.S.C. 1817(j)(17).

[62] 12 CFR 303.83(a)(4). The transferred CBCA regulation includes references to exempt transactions in 12 CFR 391.42(c)(2)(i)(A), (ii), (iii), and (iv) that are substantially similar to the exempt transactions included in the final rule.

[63] 12 CFR 303.83(a)(5).

[64] 12 CFR 303.83(a)(6).

proportional interests of the recipients remain substantially the same.[65] This language is similar to language contained in the Board of Governors' change in control regulation.[66] The FDIC believes the effect of a stock split is substantially similar to the effect of a pro rata stock dividend and has incorporated this exemption. Thus, the final rule permits an exemption for an increase in voting securities through either a pro rata stock dividend or a stock split, provided the proportional interests of the recipients remain the same.

7. Section 303.84(a)(7)

The final rule, like the existing Subpart E of Part 303, exempts the acquisition of voting securities in a foreign bank that has an insured branch in the United States.

8. Section 303.84(a)(8)

The existing Subpart E of Part 303 exempts from Notice requirements the acquisition of voting shares of a depository institution holding company that either the Board of Governors or the former OTS reviews under the Change in Bank Control Act.[67] The purpose of this exemption is to avoid duplicate regulatory review of the same acquisition of control by both the Board of Governors and the FDIC. The final rule includes this exemption, but removes the reference to the former OTS. The final rule also continues the FDIC's longstanding practice to recognize this exemption only when the Board of Governors actually reviews a Notice under the Change in Bank Control Act and not when the Board of Governors does not require and review a Notice. Accordingly, if the Board of Governors determines to accept passivity commitments in lieu of a Notice, the FDIC will evaluate the facts and circumstances of the case to determine whether a Notice is required to be filed with the FDIC for the indirect acquisition of control of an FDIC-supervised institution. This revision to the existing Subpart E of Part 303 is consistent with the language in the transferred CBCA regulation, which states that transactions for which ''a change of control notice must be submitted'' to the Board of Governors are exempt from Notice requirements.[68] This revision is also consistent with the purpose of the exemptions and the FDIC's long-standing practice.

9. Other Transferred CBCA Regulation Exemptions

The transferred CBCA regulation also includes an exemption for acquisitions of up to twenty-five percent of a class of stock by a tax-qualified employee stock benefit plan as defined in 12 CFR 192.25.[69] The final rule does not include this provision because such plans are treated in the same manner as any trust. To the extent that a trustee does not have voting rights or the power to direct how the votes will be cast, typically the FDIC would not determine that the trustee has control.

f. 303.85 Filing Procedures

The filing procedures in the final rule are identical to the filing procedures in the existing Subpart E of Part 303.[70] The FDIC is not substantially modifying the filing procedures in the existing Subpart E of Part 303 because these procedures are well-understood by the industry and have historically been easy to implement by both the FDIC and the industry. The final rule changes the filing procedures specified in the transferred CBCA regulation such that acquirers of State savings associations and certain parent companies thereof do not need to file a Notice using the OTS's Notice Form 1393.[71] Under the final rule, a specific Notice form is not required, however, all of the information required by the FFIEC Interagency Notice of Change in Control form as well as the Interagency Biographical and Financial Report would need to be submitted.[72] The FDIC encourages the use of the FFIEC forms.

Additionally, the final rule does not specifically state that the notificant may amend the Notice, as in the transferred CBCA regulation, but it is current FDIC policy that notificants can amend a Notice at their own initiative or upon the request of the FDIC.

g. 303.86 Processing and Disapproval of Notices

The procedural requirements in the final rule are substantively identical to the procedural requirements in the existing Subpart E of Part 303.[73] Similar to the reasoning for not substantially modifying the filing procedures in the existing Subpart E of Part 303, the FDIC is not making any substantive changes to the processing procedures in the final rule. Relative to the procedural requirements in the existing Subpart E of Part 303, the only modification is to state explicitly that the Change in Bank Control Act permits the FDIC to extend the notice period.[74] Material changes applicable to State savings associations, as compared to the transferred CBCA regulation, are discussed below.[75]

First, the final rule does not include the provision in the transferred CBCA regulation that failure by a State savings association to respond to a written request for information or documents within 30 calendar days would be deemed a withdrawal of the Notice or rebuttal filing.[76] Instead, any written request for information from the FDIC may include a time-limit within which the institution must respond before the Notice or rebuttal filing would be considered abandoned or withdrawn. This procedure provides more flexibility depending on the depth and amount of information requested.

Second, the final rule does not include the limitation in the transferred CBCA regulation restricting the FDIC's additional information requests, after the initial information request, to only information regarding matters derived from the initial information request or Notice, or information of a material nature that was not reasonably available for the acquirer, was concealed, or pertained to developments after the time of the initial information request.[77] The final rule does not include such a restriction because the FDIC believes it should have the flexibility to obtain all material information throughout the notice review period.

Additionally, the transferred CBCA regulation includes a list of factors that give rise to a rebuttable presumption that an acquirer may fail the integrity and financial condition statutory factors.[78] For example, if during the 10-year period immediately preceding the filing of the Notice, certain judgments, consents, orders, or administrative proceedings terminated in any agreements or orders issued against the acquirer, or affiliates of the acquirer, by any governmental entity, which involve: (A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering; (B) violation of securities or commodities laws or regulations; (C) violation of depository institution laws or

[65] 12 CFR 391.42(c)(2)(i)(C).

[66] *See* 12 CFR 225.42(a)(6).

[67] 12 CFR 303.83(a)(8). This fact pattern would arise, for example, when an individual investor, rather than a company, seeks to acquire control of a bank holding company.

[68] 12 CFR 391.42(c)(2)(iv).

[69] 12 CFR 391.42(c)(2)(i)(E).

[70] *See* 12 CFR 303.84.

[71] 12 CFR 391.45(a) and (b).

[72] A notificant may choose to use an interagency form which is available at the FFIEC Web site or from an FDIC Regional Director.

[73] *See* 12 CFR 303.85.

[74] *See* 12 CFR 303.86(b)(1).

[75] See 12 CFR 391.45(c) and 391.46 for relevant provisions of the transferred CBCA regulation.

[76] *See* 12 CFR 391.45(c)(1).

[77] *See* 12 CFR 391.45(c)(3).

[78] 12 CFR 391.46(g).

regulations; (D) violation of housing authority laws or regulations; or (E) violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization, there is a rebuttable presumption that the notificant cannot meet the statutory integrity factor. For the financial condition factor, for instance, if the notificant failed to furnish a business plan or furnished a business plan projecting activities which are inconsistent with economical home financing, then there is a rebuttable presumption the notificant cannot meet the financial condition statutory factor. As discussed above, the final rule does not adopt the presumption regarding disqualification factors. Nevertheless, the FDIC notes that these are the sort of facts that it considers when evaluating the financial or integrity factors.

h. 303.87 Public Notice Requirement

The final rule does not substantively amend the public notice requirements in the existing Subpart E of Part 303.[79] The final rule includes minor revisions to the public notice requirements for Notices that are not filed in accordance with the Change in Bank Control Act and this subpart within the time periods specified. The final rule harmonizes the public notice requirements for such Notices with the requirements for Notices filed in accordance with the Change in Bank Control Act and this subpart. Material changes applicable to State savings associations, as compared to the transferred CBCA regulation, are discussed below.[80]

First, the transferred CBCA regulation does not explicitly permit the FDIC to delay publication requirements. The final rule, like the existing Subpart E of Part 303, permits the FDIC to delay the publication required if the FDIC determines, for good cause, that it is in the public interest to grant a delay.

The final rule also permits the FDIC to shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements, or act on a Notice before the expiration of a public comment period, if it determines that an emergency exists or that disclosure of the Notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety and soundness of the institution to be acquired. The transferred CBCA regulation permits the FDIC to waive the public notice period and submission of comments for supervisory reasons.[81] The final rule includes the language from the existing Subpart E of Part 303 and not the broader language from the transferred CBCA regulation because the FDIC believes that such a waiver should be rare and granted only as specified in the existing Subpart E of Part 303. The FDIC believes that public comment is an important right and should only be waived for an emergency or serious threats to an institution's safety and soundness.

The transferred CBCA regulation provides for a 30-day comment period, but the existing Subpart E of Part 303 and the final rule include a 20-day comment period.[82] The final rule includes a 20-day comment period because, in the FDIC's experience, the 20-day comment period in the existing Subpart E of Part 303 has provided potential commenters sufficient time to comment. In addition, a 20-day comment period gives the FDIC sufficient time to review any comments during the limited statutory review period (60-days unless extended further). Finally, a 20-day comment period provides consistency among the Federal banking agencies with respect to State savings associations, State nonmember banks, national banks, and State member banks.

The final rule also requires that if a Notice was not filed in accordance with the Change in Bank Control Act and this subpart within the time periods specified, the notificant must publish an announcement of the acquisition of control in a newspaper of general circulation in the community in which the home office of the FDIC-supervised institution acquired is located within 10 days after being directed to file a Notice by the FDIC. This express requirement is not included in the transferred CBCA regulation.

The transferred CBCA regulation includes a provision regarding how an applicant can request that information submitted in connection with a Notice be treated as confidential.[83] The final rule does not include these procedures because the FDIC has comparable disclosure and confidentiality regulations in 12 CFR part 309 that already cover such requests.

Finally, the transferred CBCA regulation explicitly states that the FDIC will notify the State savings association's State supervisor of the filing of a Notice.[84] As this is a statutory requirement, the FDIC does not believe its inclusion in the final rule is necessary.

i. 303.88 Reporting of Stock Loans and Changes in Chief Executive Officers and Directors

The final rule includes two longstanding statutory reporting requirements that are not included in existing Subpart E of Part 303 or the transferred CBCA regulation. The first statutory reporting requirement relates to any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a covered institution.[85] The second statutory reporting requirement included in the final rule relates to changes in chief executive officers and directors of a bank within 12 months of a change in control being consummated.[86] The final rule does not add to, or modify, the existing statutory requirements and only includes the longstanding statutory requirements to enhance transparency for covered institutions.

j. Other Transferred CBCA Regulation Provisions

The final rule does not include similar language to that in 12 CFR 391.45(i)–(j), which outlines additional procedures for Notices that involve other filings to the FDIC. Notificants should review other applicable regulatory sections, such as 12 CFR 303.60 *et seq.* concerning merger applications or mutual-to-stock conversions, for further information on related filings. The FDIC generally prefers not to cross-reference filings that a particular transaction may require. The FDIC notes that acquisitions of voting securities subject to approval under section 18(c) of the FDI Act are exempt from Notice requirements.

The transferred CBCA regulation also contains a rebuttal of control agreement.[87] The final rule does not include this agreement because the FDIC believes that a rebuttal of control should be tailored to the facts and circumstances of each situation, and a standard agreement would not typically capture the various circumstances that may be present in some situations. The FDIC prefers to make any potential rebuttal of control decision only after reviewing the facts and circumstances of the particular acquisition.[88]

[79] *See* 12 CFR 303.86.

[80] *See* 12 CFR 391.45.

[81] 12 CFR 391.45(g).

[82] 12 CFR 303.86(d) and 12 CFR 391.45(e).

[83] 12 CFR 391.45(f).

[84] 12 CFR 391.45(h).

[85] 12 U.S.C. 1817(j)(9).

[86] 12 U.S.C. 1817(j)(12).

[87] 12 CFR 391.48.

[88] *See also* discussion at II.c.7, *supra.*

The final rule also excludes the requirement in the transferred CBCA regulation that certain acquirers of beneficial ownership exceeding 10 percent of any class of stock of a State savings association file a certification of ownership. The FDIC believes that the regulatory burden of these filings exceeds the benefits derived from them.

k. Existing OTS Guidance

All guidance issued by the OTS that would otherwise apply to changes in control of State savings associations and that is inconsistent with the provisions of this final rule or the FDIC's policies or procedures is rescinded on the effective date of this final rule to the extent that such guidance would otherwise apply to changes in control of State savings associations.

IV. Regulatory Analyses

A. Paperwork Reduction Act (PRA)

In accordance with the requirements of the Paperwork Reduction Act of 1995, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.[89] The *Interagency Notice of Change in Control* form has previously been approved by the OMB under Control No. 3064–0019 for all covered institutions, including State nonmember banks and State savings associations. This final rule does not revise the *Interagency Notice of Change in Control* form for covered institutions; therefore, no Information Collection Request will be submitted to OMB.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of a final rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million). A regulatory flexibility analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the final rule. For the reasons provided below, the FDIC certifies that the final rule does not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule only affects persons acquiring control of covered institutions, which may include small banking entities. As such, the rule does not have a significant economic impact on a substantial number of small entities as the final rule does not impose any new requirements or prohibitions on small banking entities and does not impose any direct costs on small banking entities. As discussed in the preamble, the final rule primarily revises the circumstances that require the filing of a Notice for persons acquiring control of a covered institution, including a small banking entity. Any impact of the final rule is borne by the persons acquiring a controlling interest in a covered institution and not by the covered institution directly. Furthermore, for State nonmember banks and certain of their parent companies, the final rule generally codifies existing FDIC practice and should only marginally affect the number of persons subject to Notice requirements. While the changes for State savings associations are more material, the changes generally conform the requirements for acquirers of State savings associations under the transferred CBCA regulation with the requirements for acquirers of other insured depository institutions and should not materially increase the number of change in control Notices that must be filed. Currently, the FDIC receives approximately 35 change in control Notices each year, and the FDIC does not expect the final rule to increase the number of Notices received. As such, the final rule does not have a significant economic impact on a substantial number of small banking entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC sought to present the proposed rule in a simple and straightforward manner and did not receive any comments on the use of plain language. The FDIC has similarly drafted the final rule.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Banks, Banking, Savings associations, Change in bank control.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends parts 303 and 391 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

■ 1. Revise the authority citation for part 303 to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414; 15 U.S.C. 1601–1607.

■ 2. Revise Subpart E to read as follows:

Subpart E—Change in Bank Control Act

Sec.
303.80 Scope.
303.81 Definitions.
303.82 Transactions that require prior notice.
303.83 Transactions that require notice, but not prior notice.
303.84 Transactions that do not require notice.
303.85 Filing procedures.
303.86 Processing.
303.87 Public notice requirements.
303.88 Reporting of stock loans and changes in chief executive officers and directors.
303.89–303.99 [Reserved]

Subpart E—Change in Bank Control

§ 303.80 Scope.

This subpart implements the provisions of the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)) (CBCA), and sets forth the filing requirements and processing procedures for a notice of change in control with respect to the acquisition of control of a State nonmember bank, a State savings association, or certain parent companies of either a State nonmember bank or a State savings association.

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a covered institution whether or not pursuant to an express agreement.

(b) *Company* means a company as defined in section 2 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) and any person that is not an individual including for example, a limited liability company.

(c) *Control* means the power, directly or indirectly, to direct the management

[89] 44 U.S.C. 3501 *et seq.*

or policies of a covered institution or to vote 25 percent or more of any class of voting securities of a covered institution.

(d) *Convertible securities* mean debt or equity interests that may be converted into voting securities.

(e) *Covered institution* means an insured State nonmember bank, an insured State savings association, and any company that controls, directly or indirectly, an insured State nonmember bank or an insured State savings association other than a holding company that is the subject of an exemption described in either section 303.84(a)(3) or (a)(8).

(f) *Immediate family* means a person's parents, mother-in-law, father-in-law, children, step-children, siblings, step-siblings, brothers-in-law, sisters-in-law, grandparents, and grandchildren, whether biological, adoptive, adjudicated, contractual, or *de facto;* the spouse of any of the foregoing; and the person's spouse.

(g) *Person* means an individual, corporation, limited liability company (LLC), partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, voting trust, or any other form of entity; and includes each party to a voting agreement and any group of persons acting in concert.

(h) *Management official* means any officer, LLC manager, director, partner, or trustee of an entity, or other person with similar functions and powers with respect to a company.

(i)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, membership interests, or similar interests if the shares or interests, by statute, charter, or in any manner, entitle the holder:

(i) To vote for, or to select, directors, trustees, managers of an LLC, partners, or other persons exercising similar functions of the issuing entity; or

(ii) To vote on, or to direct, the conduct of the operations or significant policies of the issuing entity.

(2) Nonvoting shares: Shares of common or preferred stock, limited partnership shares or interests, membership interests, or similar interests are not ''voting securities'' if:

(i) Any voting rights associated with the shares or interests are limited solely to the type customarily provided by State statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing entity, or the payment of dividends by the issuing entity when preferred dividends are in arrears;

(ii) The shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing entity; and

(iii) The shares or interests do not entitle the holder, by statute, charter, or in any manner, to select, or to vote for the selection of, directors, trustees, managers of an LLC, partners, or persons exercising similar functions of the issuing entity.

(3) Class of voting securities: Voting securities issued by a single issuer are deemed to be the same class of voting securities, regardless of differences in dividend rights or liquidation preference, if the securities are voted together as a single class on all matters for which the securities have voting rights other than matters described in paragraph (i)(2)(i) of this section that affect solely the rights or preferences of the securities.

§ 303.82 Transactions that require prior notice.

(a) *Prior notice requirement.* (1) Except as provided in §§ 303.83 and 303.84, no person, acting directly or indirectly, or through or in concert with one or more persons, shall acquire control of a covered institution unless the person shall have given the FDIC prior notice of the proposed acquisition as provided in the CBCA and this subpart, and the FDIC has not disapproved the acquisition within 60 days or such longer period as may be permitted under the CBCA; and

(2) Except as provided in §§ 303.83 and 303.84, and unless waived by the FDIC, no person who has been approved to acquire control of a covered institution and who has maintained that control shall acquire, directly or indirectly, or through or in concert with one or more persons, voting securities of such covered institution if that person's ownership, control, or power to vote will increase from less than 25 percent to 25 percent or more of any class of voting securities of the covered institution, unless the person shall have given the FDIC prior notice of the proposed acquisition as provided in the CBCA and this subpart, and the FDIC has not disapproved the acquisition within 60 days or such longer period as may be permitted under the CBCA.

(b) *Rebuttable presumptions*—(1) *Rebuttable presumptions of control.* The FDIC presumes that an acquisition of voting securities of a covered institution constitutes the acquisition of the power to direct the management or policies of that institution requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.

(2) *Rebuttable presumptions of acting in concert.* The following persons who own or control, or propose to own or control voting securities in a covered institution, shall be presumed to be acting in concert for purposes of this subpart:

(i) A company and any controlling shareholder or management official of the company;

(ii) An individual and one or more members of the individual's immediate family;

(iii) Companies under common control or a company and each company it controls;

(iv) Two or more persons that have made, or propose to make, a joint filing related to the proposed acquisition under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission;

(v) A person and any trust for which the person serves as trustee or any trust for which the person is a beneficiary; and

(vi) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a covered institution, other than through revocable proxies as described in § 303.84(a)(5).

(3) *Convertible securities, options, and warrants.* The acquisition of convertible securities, or options or warrants to acquire voting securities is presumed to constitute the acquisition of voting securities.

(4) *Rebuttal of presumptions.* The FDIC will afford any person seeking to rebut a presumption in this paragraph (b) an opportunity to present its views in writing.

(c) *Acquisition of loans in default.* An acquisition of a loan in default that is secured by voting securities of a covered institution is deemed to be an acquisition of the underlying securities for purposes of this subpart. Before

acquiring a loan in default that upon foreclosure would result in the acquiring person owning, controlling, or holding with the power to vote a controlling amount of a covered institution's voting securities, the potential acquirer must give the FDIC prior written notice as specified in this subpart.

§ 303.83 Transactions that require notice, but not prior notice.

(a) *Notice within 90 days after the acquisition.* The following acquisitions of voting securities of a covered institution, which otherwise would require prior notice under this subpart, instead require the acquirer to provide to the appropriate FDIC office within 90 calendar days after the acquisition all relevant information requested by the FDIC:

(1) The acquisition of voting securities as a bona fide gift;

(2) The acquisition of voting securities in satisfaction of a debt previously contracted in good faith, except as provided in § 303.82(c); and

(3) The acquisition of voting securities through inheritance.

(b) *Notice within 90 days after receiving notice of the event giving rise to the acquisition of control.* The following acquisitions of control of a covered institution, which otherwise would require prior notice under this subpart, instead require the person acquiring control to provide to the appropriate FDIC office, within 90 calendar days after receiving notice of the event giving rise to the acquisition of control, all relevant information requested by the FDIC:

(1) The acquisition of control resulting from a redemption of voting securities by the issuing covered institution; and

(2) The acquisition of control as a result of any event or action (including without limitation the sale of securities) by any third party that is not within the control of the person acquiring control.

(c) The FDIC may disapprove a notice filed after an acquisition of control, and nothing in this section limits the authority of the FDIC to disapprove a notice pursuant to § 303.86(c).

(d) The relevant information that the FDIC may require under this section may include all information and documents routinely required for a prior notice as provided in § 303.85.

(e) If the FDIC disapproves a Notice filed under this § 303.83, the notificant(s) must divest control of the covered institution which may include, without limitation, disposing of some or all of the voting securities so that the notificant(s) is no longer in control of the covered institution, within such period of time and in the manner that the FDIC may determine.

§ 303.84 Transactions that do not require notice.

(a) *Exempt transactions.* The following transactions do not require notice to the FDIC under this subpart:

(1) The acquisition of additional voting securities of a covered institution by a person who:

(i) Held the power to vote 25 percent or more of any class of voting securities of the institution continuously since the later of March 9, 1979, or the date that the institution commenced business; or

(ii) Is presumed, under § 303.82(b) to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the FDIC determines that the person has controlled the institution continuously since March 9, 1979;

(2) The acquisition of additional voting securities of a covered institution by a person who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after obtaining the FDIC's non-objection under the CBCA and the FDIC's regulations or the OTS's non-objection under the repealed Change in Savings and Loan Control Act, 12 U.S.C. 1730(q), and the regulations thereunder then in effect, to acquire control of the institution, unless a notice is required for an increase in ownership described in 12 CFR 303.82(a)(2);

(3) Acquisitions of voting securities subject to approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842(a)), section 18(c) of the FDI Act (12 U.S.C. 1828(c)), or section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a);

(4) Any transaction described in sections 2(a)(5), 3(a)(A), or 3(a)(B) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5), 1842(a)(A), or 1842(a)(B)) by a person described in those provisions;

(5) A customary one-time solicitation of a revocable proxy;

(6) The receipt of voting securities of a covered institution through a pro rata stock dividend or stock split if the proportional interests of the recipients remain substantially the same;

(7) The acquisition of voting securities in a foreign bank that has an insured branch in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the CBCA (12 U.S.C. 1817(j)(9), (10), and (12)); and

(8) The acquisition of voting securities of a depository institution holding company for which the Board of Governors of the Federal Reserve System reviews a notice pursuant to the CBCA (12 U.S.C. 1817(j)).

§ 303.85 Filing procedures.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate FDIC office and shall contain all the information required by paragraph 6 of the CBCA, section 7(j) of the FDI Act, (12 U.S.C. 1817(j)(6)), or prescribed in the designated interagency forms which may be obtained from any FDIC regional director.

(2) The FDIC may waive any of the informational requirements of the notice if the FDIC determines that it is in the public interest.

(3) A notificant shall notify the appropriate FDIC office immediately of any material changes in the information contained in a notice submitted to the FDIC, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated interagency form, together with a statement of any material changes since the date of the statement or summary. The FDIC may require additional information if appropriate.

(b) *Other laws.* Nothing in this subpart shall affect any obligation which the acquiring person(s) may have to comply with the federal securities laws or other laws.

§ 303.86 Processing.

(a) *Acceptance of notice, additional information.* The FDIC shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted as substantially complete. The FDIC may request additional information at any time.

(b) *Commencement of the 60-day notice period: consummation of acquisition.* (1) The 60-day notice period specified in § 303.82 shall commence on the day after the date of acceptance of a substantially complete notice by the appropriate regional director. The notificant(s) may consummate the proposed acquisition after the expiration of the 60-day notice period, unless the FDIC disapproves the proposed acquisition or extends the notice period as provided in the CBCA.

(2) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period,

including any extensions, if the FDIC notifies the notificant(s) in writing of its intention not to disapprove the acquisition.

(c) *Disapproval of acquisition of control.* Subpart D of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

§ 303.87 Public notice requirements.

(a) *Publication*—(1) *Newspaper announcement.* Any person(s) filing a notice under this subpart shall publish an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the home office of the covered institution to be acquired is located.

(2) *Timing of publication.* The announcement shall be published as close as is practicable to the date the notice is filed with the appropriate FDIC office, but in no event more than 10 calendar days before or after the filing date. If the filing is not filed in accordance with the CBCA and this subpart within the time periods specified herein, the acquiring person(s) shall, within 10 days of being directed by the FDIC to file a Notice, publish an announcement of the acquisition of control.

(3) *Contents of newspaper announcement.* The newspaper announcement shall conform to the public notice requirements set forth in § 303.7. If the filing is not filed in accordance with the CBCA and this subpart within the time periods specified herein, the announcement shall also include the date of the acquisition and contain a statement indicating that the FDIC is currently reviewing the acquisition of control.

(b) *Delay of publication.* The FDIC may permit delay in the publication required by this section if the FDIC determines, for good cause, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate FDIC office.

(c) *Shortening or waiving public comment period, waiving publications; acting before close of public comment period.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of paragraph (a) of this section, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety and soundness of the State nonmember bank or State savings association to be acquired.

(d) *Consideration of public comments.* In acting upon a notice filed under this subpart, the FDIC shall consider all public comments received in writing within 20 days following the required newspaper publication or, if the FDIC has shortened the public comment period pursuant to paragraph (c) of this section, within such shorter period.

§ 303.88 Reporting of stock loans and changes in chief executive officers and directors.

(a) *Requirements of reporting stock loans.* (1) Any foreign bank or affiliate of a foreign bank that has credit outstanding to any person or group of persons, in the aggregate, which is secured, directly or indirectly, by 25 percent or more of any class of voting securities of a covered institution, shall file a consolidated report with the appropriate FDIC office.

(2) Any voting securities of the covered institution held by the foreign bank or any affiliate of the foreign bank as principal must be included in the calculation of the number of voting securities in which the foreign bank or its affiliate has a security interest for purposes of this paragraph (a).

(b) *Definitions.* For purposes of paragraph (a) of this section:

(1) Foreign bank shall have the same meaning as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(2) Affiliate shall have the same meaning as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(3) Credit outstanding includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to the person or group of persons.

(4) Group of persons includes any number of persons that the foreign bank or any affiliate of a foreign bank has reason to believe:

(i) Are acting together, in concert, or with one another to acquire or control voting securities of the same covered institution, including an acquisition of voting securities of the same covered institution at approximately the same time under substantially the same terms; or

(ii) Have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission regarding ownership of the voting securities of the same covered institution.

(c) *Exceptions.* Compliance with paragraph (a) of this section is not required if:

(1) The person or group of persons referred to in paragraph (a) has disclosed the amount borrowed and the security interest therein to the appropriate FDIC office in connection with a notice filed under the CBCA, an application filed under either 12 U.S.C. 1841, *et seq.* or 12 U.S.C. 1467a, or any other application filed with the FDIC as a substitute for a notice under § 303.82 of this subpart, including an application filed under section 18(c) of the FDI Act (Bank Merger Act, 12 U.S.C. 1828(c)) or section 5 of the FDI Act (12 U.S.C. 1815); or

(2) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more; or, if the transaction involves stock issued by a newly chartered bank, before the bank is opened for business.

(d) *Report requirements for purposes of paragraph (a) of this section.* (1) The consolidated report must indicate the number and percentage of voting securities securing each applicable extension of credit, the identity of the borrower, the number of voting securities held as principal by the foreign bank and any affiliate thereof, and any additional information that the FDIC may require in connection with a particular report.

(2) A foreign bank, or any affiliate of a foreign bank, shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a covered institution.

(e) *Foreign bank or affiliate not supervised by FDIC.* If the foreign bank, or any affiliate thereof, is not supervised by the FDIC, it shall file a copy of the report filed under paragraph (a) of this section with its appropriate Federal banking agency.

(f) *Reporting requirement.* After the consummation of a change in control, a covered institution must notify the FDIC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12–month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and

current business and professional affiliations of the new chief executive officers or directors.

§§ 303.89–303.99 [Reserved]

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 3. The authority for part 391 is revised to read as follows:

Authority: 12 U.S.C. 1819(a) (Tenth).; Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.; Subpart B also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; 1881–1884; 15 U.S.C.1681w; 15 U.S.C. 6801; 6805.; Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; and 1881–1884; 15 U.S.C. 1681m; 1681w.; Subpart D also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 42 U.S.C. 4012a; 4104a; 4104b; 4106; 4128.

Subpart E—[Removed and Reserved]

■ 4. Remove and reserve subpart E, consisting of §§ 391.40 through 391.48.

By order of the Board of Directors.

Dated at Washington, DC this 22nd day of October, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27289 Filed 10–27–15; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308, 364, and 391

RIN 3064–AE28

Removal of Transferred OTS Regulations Regarding Safety and Soundness Guidelines and Compliance Procedures; Rules on Safety and Soundness

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting a final rule (''Final Rule'') to rescind and remove from the Code of Federal Regulations 12 CFR part 391, subpart B (''part 391, subpart B''), entitled ''Safety and Soundness Guidelines and Compliance Procedures,'' appendices A and B to part 391, subpart B, and supplement A to appendix B. The Final Rule also amends 12 CFR part 308, subpart R (''part 308, subpart R''), entitled ''Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies,'' and 12 CFR part 364 (''part 364''), entitled ''Standards for Safety and Soundness'' and its corresponding appendices and supplement. Part 391, subpart B was one of several rules transferred to the FDIC following dissolution of the former Office of Thrift Supervision (''OTS'') in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Section 316(b)(3) of the Dodd-Frank Act provided that the former OTS rules that were transferred to the FDIC would be enforceable by or against the FDIC until they were modified, terminated, set aside, or superseded in accordance with applicable law by the FDIC, by any court of competent jurisdiction, or by operation of law. On January 30, 2015, the FDIC published in the **Federal Register** a notice of proposed rulemaking (''NPR'' or ''Proposed Rule'') that explained and solicited public comment on a proposal to rescind and remove part 391, subpart B and to amend part 364, its appendices, and its supplement and part 308, subpart R by making them applicable to ''State savings associations'' and making minor technical updates to the appendices and supplement to part 364. The FDIC received no comments on the Proposed Rule and consequently is adopting the Final Rule as proposed in the NPR without change.

DATES: The Final Rule is effective on November 27, 2015.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Parks, Review Examiner, Division of Risk Management Supervision (202) 898–3912; Jann L. Harley, Senior Attorney, Legal Division (312) 382–6535; or Michael P. Condon, Counsel, Legal Division (202) 898–6536.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (''OCC''), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (''FRB''), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[1]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in Section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, operating pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in

[1] 76 FR 39247 (July 6, 2011).

the **Federal Register** on August 5, 2011.[2] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

II. Proposed Rule

A. Removal of Part 391, Subpart B

On January 30, 2015, the FDIC published an NPR proposing to remove part 391, subpart B, which was one of the OTS's former rules that was transferred to the FDIC and governs safety and soundness guidelines, the submission and review of safety and soundness compliance plans, and the issuance of orders to correct safety and soundness deficiencies. The OTS's rule, formerly found at 12 CFR part 570, was transferred to the FDIC with only nomenclature changes and is now found in the FDIC's rules at part 391, subpart B, entitled ''Safety and Soundness Guidelines and Compliance Procedures.'' The ''Interagency Guidelines Establishing Standards for Safety and Soundness'' were found at appendix A to part 391, subpart B, the ''Interagency Guidelines Establishing Information Security Standards'' were found at appendix B to part 391, subpart B, and the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice'' were found at the supplement to appendix B to part 391, subpart B.

Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 364, entitled ''Standards for Safety and Soundness,'' a rule establishing safety and soundness standards for State nonmember insured banks and to State-licensed insured branches of foreign banks, that are subject to section 39 of the FDI Act, 12 U.S.C. 1831p–1. Part 364 also established safety and soundness standards relating to information security for State nonmember insured banks, insured State licensed branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisors) as set out in appendix B to part 364, the ''Interagency Guidelines Establishing Information Security Standards'' and supplement A to appendix B to part 364, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.'' Additionally, before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 308, subpart R, entitled ''Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies.''

The NPR proposed to remove part 391, subpart B, its appendices, and its supplement because they are redundant of the rules found in part 364, its appendices, and its supplement and part 308, subpart R. Rescinding part 391, subpart B, serves to streamline the FDIC's rules and eliminate unnecessary regulations.

B. Amendments to Part 364, Its Appendices, and Part 308, Subpart B

In addition, the NPR proposed to revise part 308, subpart R, and part 364 and the accompanying appendices A and B and supplement A to appendix B. Furthermore, to clarify that part 308, subpart R, and part 364 and its accompanying appendices A and B and supplement A to appendix B, apply to all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency, the NPR proposed to amend part 308, subpart R, and part 364 and to reissue the appendices and supplement A to appendix B to part 364 to add ''State savings associations'' within the list of institutions to which the rules and the appendices apply.

FDIC's Existing 12 CFR Part 308, Subpart R

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (''FDICIA''), Pub. L. 102–242, added Section 39 to the FDI Act (12 U.S.C. 21 1831p–1), which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions for which it was the primary Federal regulator. Section 39 of the FDI Act was further amended on September 23, 1994 by section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325. In response to Section 39 of the FDI Act, the FDIC adopted subpart R of part 308 in 1995 to address the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies.

FDIC's Existing 12 CFR Part 364 and Appendices A and B and Supplement A to Appendix B

Section 132 of the FDICIA, Pub. L. 102–242, added Section 39 to the FDI Act (12 U.S.C. 21 1831p–1), which required each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions for which it was the primary Federal regulator. Section 39 of the FDI Act was further amended on September 23, 1994 by section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325. In response to Section 39 of the FDI Act, the FDIC adopted part 364 in 1995 and appendix A to part 364, the ''Interagency Guidelines Establishing Standards for Safety and Soundness,'' in 1995. The FDIC adopted appendix B to part 364, the ''Interagency Guidelines Establishing Information Security Standards,'' in 1998. The FDIC adopted supplement A to appendix B to part 364, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice,'' in 2005.

Former OTS's 12 CFR Part 570 (Transferred to FDIC's Part 391, Subpart B)

In 1995, the OTS adopted 12 CFR part 570 as a final rule governing safety and soundness guidelines and compliance procedures for State savings associations. The OTS adopted appendix A to part 570, the ''Interagency Guidelines Establishing Standards for Safety and Soundness,'' in 1995, adopted appendix B to part 570, the ''Interagency Guidelines Establishing Information Security Standards,'' in 1998, and adopted the supplement to appendix B, the ''Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice,'' in 2005.

Comparison of Former OTS's 12 CFR Part 570 (Transferred to FDIC's Part 391, Subpart B) and FDIC's Part 364 and Part 308, Subpart R

Despite the differences addressed above and minor technical nuances, the OTS's rule was otherwise substantively similar to the FDIC's rules governing safety and soundness guidelines and compliance procedures found in part 308, subpart R, and part 364 and its accompanying appendices and supplement. After careful comparison of the OTS part 570 (which existed prior to the transfer of the OTS rules to part 391) with the FDIC's part 308, subpart R, and the FDIC's part 364, the FDIC concluded that the transferred OTS rules found at part 391, subpart B, and the accompanying guidelines found in appendices A and B and the supplement to appendix B, are substantively

[2] 76 FR 47652 (Aug. 5, 2011).

redundant. Therefore, based on the above, the NPR proposed to rescind and remove from the Code of Federal Regulations the rules located at part 391, subpart B, including its appendices and supplement.

In addition, the NPR proposed to amend part 364 and appendix A and B and supplement A to appendix B to include State savings associations within the scope of the regulation and guidelines and minor technical updates. The NPR also proposed to amend part 308, subpart R to apply to State savings associations. The safety and soundness guidelines in part 364 and its accompanying appendices and supplement to appendices apply to all FDIC-supervised institutions, and the procedures found in part 308, subpart R, for the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies also apply to all FDIC-supervised institutions.

III. Comments

The FDIC issued the NPR with a 60-day comment period, which closed on March 31, 2015. The FDIC received no comments on the Proposed Rule, and consequently, the Final Rule is adopted as proposed without any changes.

IV. Explanation of the Final Rule

As discussed in the NPR, part 391, subpart B is substantively similar to part 364 and part 308, subpart R for safety and soundness guidelines and compliance plans, and the designation of part 364 and part 308, Subpart R as the single authority for safety and soundness guidelines and compliance plans will serve to streamline the FDIC's rules and eliminate unnecessary regulations. To that effect, the Final Rule removes and rescinds 12 CFR part 391, subpart B, its appendices, and its supplement in their entirety. Consistent with the Proposed Rule, the Final Rule also make conforming and technical amendments to part 364 and its appendices and part 308, subpart R, making all applicable to state savings associations.

V. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Final Rule rescinds and removes part 391, subpart B, from the FDIC regulations. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 391, subpart B, is largely redundant of the FDIC's existing part 364 regarding standards for safety and soundness and subpart R of the FDIC's existing part 308 regarding the submission and review of safety and soundness compliance plans and issuance of orders to correct safety and soundness deficiencies.

The Final Rule amends parts 364 and subpart R of part 308 to include State savings associations within the scope of those regulations. This measure is to clarify that State savings associations, as well as State nonmember insured banks and foreign banks having insured branches, are all subject to part 364 and the provisions of subpart R of part 308. Thus, these provisions of the Proposed Rule will neither create any new paperwork information collections nor impact current burden estimates. Based on the above, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million).[3] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. For the reasons provided below, the FDIC certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this notice of proposed rulemaking, part 391, subpart B was transferred from OTS's part 570 which established safety and soundness guidelines and the process for requesting compliance plans and issuing orders to correct deficiencies. OTS's part 570 had been in effect since 1995, and all state savings associations were required to comply with it. Because it is redundant of existing part 364 of the FDIC's rules and subpart R of part 308 of the FDIC's rules, the FDIC proposes rescinding and removing part 391, subpart B. As a result, all FDIC-supervised institutions, including State savings associations, would be required to comply with part 364 and part 308, subpart R. Because all State savings associations have been required to comply with substantially similar safety and soundness guidelines and have been subject to substantially similar procedures for the filing of safety and soundness compliance plans and orders to correct deficiencies since 1995, the Final Rule will have no significant economic impact on any State savings association.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although the FDIC did not receive any comments, the FDIC sought to present the Final Rule in a simple and straightforward manner.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[4] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. As part of the NPR, the FDIC invited comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. The FDIC received no comments.

List of Subjects

12 CFR Part 308

Banks, banking, safety and soundness compliance plans, savings associations.

12 CFR Part 364

Banks, banking, safety and soundness guidelines.

12 CFR Part 391

Safety and soundness guidelines.

[3] 5 U.S.C. 601 *et seq.*

[4] Pub. L. 104–208 (Sept. 30, 1996).

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 308, 364, and 391 of title 12 of the Code of Federal Regulations as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554-557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358; and Pub. L. 109–351.

■ 2. Revise subpart R to read as follows:

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

Sec.
308.300 Scope.
308.301 Purpose.
308.302 Determination and notification of failure to meet a safety and soundness standard and request for compliance plan.
308.303 Filing of safety and soundness compliance plan.
308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
308.305 Enforcement of orders.

§ 308.300 Scope.

The rules and procedures set forth in this subpart apply to insured state nonmember banks, to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1), and to state savings associations (in aggregate, bank or banks and state savings association or state savings associations).

§ 308.301 Purpose.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards. Pursuant to section 39, a bank or savings association may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank or savings association fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 308.302 Determination and notification of failure to meet a safety and soundness standard and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection or any other information that becomes available to the FDIC, determine that a bank or state savings association has failed to satisfy the safety and soundness standards set out in part 364 of this chapter and in the Interagency Guidelines Establishing Standards for Safety and Soundness in appendix A and the Interagency Guidelines Establishing Information Security Standards in appendix B to part 364 of this chapter.

(b) *Request for compliance plan.* If the FDIC determines that a bank or state savings association has failed a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC may request, by letter or through a report of examination, the submission of a compliance plan and the bank or state savings association shall be deemed to have notice of the request three days after mailing of the letter by the FDIC or delivery of the report of examination.

§ 308.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan*—(1) *In general.* A bank or state savings association shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 308.302(b), unless the FDIC notifies the bank or state savings association in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank or state savings association is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank or state savings association will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the bank or state savings association of whether the plan has been approved or seek additional information from the bank or state savings association regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan*—(1) *Supervisory actions.* If a bank or state savings association fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the bank or state savings association to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the bank or state savings association commenced operations or experienced a change in control within the previous 24-month period, or the bank or state savings association experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank or state savings association that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank or state savings association that has filed an approved compliance plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or state savings association shall implement the compliance plan as previously approved.

§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) *In general.* The FDIC shall provide a bank or state savings association prior written notice of the FDIC's intention to issue an order requiring the bank or state savings association to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank or state savings association shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank or state savings association immediately to take actions to correct a safety and soundness deficiency or take or refrain from taking other actions pursuant to section 39. A bank or state savings association that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the FDIC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intent to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank or state savings association;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank or state savings association subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank or state savings association may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the bank or state savings association or other relevant circumstances.

(2) *Contents of response.* The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or state savings association regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank or state savings association; or

(3) Seek additional information or clarification of the response from the bank or state savings association, or any other relevant source.

(e) *Failure to file response.* Failure by a bank or state savings association to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification of rescission of order.* Any bank or state savings association that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 308.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank or state savings association fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Failure to comply with order.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank or state savings association that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

■ 3. Revise part 364 to read as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.
364.100 Purpose.
364.101 Standards for safety and soundness.
Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness
Appendix B to Part 364—Interagency Guidelines Establishing Information Security Standards

Authority: 12 U.S.C. 1818 and 1819 (Tenth), 1831p–1; 15 U.S.C. 1681b, 1681s, 1681w, 6801(b), 6805(b)(1).

§ 364.100 Purpose.

Section 39 of the Federal Deposit Insurance Act requires the Federal Deposit Insurance Corporation to establish safety and soundness standards. Pursuant to section 39, this part establishes safety and soundness standards by guideline.

§ 364.101 Standards for safety and soundness.

(a) *General standards.* The Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), as set forth as appendix A to this part, apply to all insured state nonmember banks, to state-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act, and to state savings associations (in aggregate, bank or banks and savings association or savings associations).

(b) *Interagency Guidelines Establishing Information Security Standards.* The Interagency Guidelines Establishing Information Security Standards prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)), and with respect to the proper disposal of consumer information requirements pursuant to section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w), as set forth in appendix B to this part, apply to all insured state nonmember banks, insured state licensed branches of foreign banks, any subsidiaries of such entities (except brokers, dealers, persons providing

insurance, investment companies, and investment advisers), and to state savings associations. The interagency regulations and guidelines on identity theft detection, prevention, and mitigation prescribed pursuant to section 114 of the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. 1681m(e), are set forth in §§ 334.90, 334.91, and Appendix J of part 334.

Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness

I. Introduction.
A. Preservation of existing authority.
B. Definitions.
II. Operational and Managerial Standards.
A. Internal controls and information systems.
B. Internal audit system.
C. Loan documentation.
D. Credit underwriting.
E. Interest rate exposure.
F. Asset growth.
G. Asset quality.
H. Earnings.
I. Compensation, fees and benefits.
III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice.
A. Excessive compensation.
B. Compensation leading to material financial loss.

I. Introduction

i. Section 39 of the Federal Deposit Insurance Act [1] (FDI Act) requires each Federal banking agency (collectively, the agencies) to establish certain safety and soundness standards by regulation or by guidelines for all insured depository institutions. Under section 39, the agencies must establish three types of standards: (1) Operational and managerial standards; (2) compensation standards; and (3) such standards relating to asset quality, earnings, and stock valuation as they determine to be appropriate.

ii. Section 39(a) requires the agencies to establish operational and managerial standards relating to: (1) Internal controls, information systems and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39. Section 39(b) requires the agencies to establish standards relating to asset quality, earnings, and stock valuation that the agencies determine to be appropriate.

iii. Section 39(c) requires the agencies to establish standards prohibiting as an unsafe and unsound practice any compensatory arrangement that would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits and any compensatory arrangement that could lead to material financial loss to an institution. Section 39(c) also requires that the agencies establish standards that specify when compensation is excessive.

iv. If an agency determines that an institution fails to meet any standard established by guidelines under subsection (a) or (b) of section 39, the agency may require the institution to submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

v. The agencies have adopted amendments to their rules and regulations to establish deadlines for submission and review of compliance plans.[2]

vi. The following Guidelines set out the safety and soundness standards that the agencies use to identify and address problems at insured depository institutions before capital becomes impaired. The agencies believe that the standards adopted in these Guidelines serve this end without dictating how institutions must be managed and operated. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the Deposit Insurance Fund.

A. Preservation of Existing Authority

Neither section 39 nor these Guidelines in any way limits the authority of the agencies to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and these Guidelines may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the agencies. Nothing in these Guidelines limits the authority of the FDIC pursuant to section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831(o)) and Part 325 of Title 12 of the Code of Federal Regulations.

B. Definitions

1. *In general.* For purposes of these Guidelines, except as modified in the Guidelines or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

2. *Board of directors,* in the case of a state-licensed insured branch of a foreign bank and in the case of a federal branch of a foreign bank, means the managing official in charge of the insured foreign branch.

3. *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

4. *Director* shall have the meaning described in 12 CFR 215.2(d).[3]

5. *Executive officer* shall have the meaning described in 12 CFR 215.2(e).[4]

6. *Principal shareholder* shall have the meaning described in 12 CFR 215.2(m).[5]

II. Operational and Managerial Standards

A. *Internal controls and information systems.* An institution should have internal controls and information systems that are appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for:

1. An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established policies;
2. Effective risk assessment;
3. Timely and accurate financial, operational and regulatory reports;
4. Adequate procedures to safeguard and manage assets; and
5. Compliance with applicable laws and regulations.

B. *Internal audit system.* An institution should have an internal audit system that is appropriate to the size of the institution and the nature and scope of its activities and that provides for:

1. Adequate monitoring of the system of internal controls through an internal audit function. For an institution whose size, complexity or scope of operations does not warrant a full scale internal audit function, a system of independent reviews of key internal controls may be used;
2. Independence and objectivity;
3. Qualified persons;
4. Adequate testing and review of information systems;
5. Adequate documentation of tests and findings and any corrective actions;
6. Verification and review of management actions to address material weaknesses; and
7. Review by the institution's audit committee or board of directors of the effectiveness of the internal audit systems.

C. *Loan documentation.* An institution should establish and maintain loan documentation practices that:

1. Enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
2. Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
3. Ensure that any claim against a borrower is legally enforceable;
4. Demonstrate appropriate administration and monitoring of a loan; and
5. Take account of the size and complexity of a loan.

D. *Credit underwriting.* An institution should establish and maintain prudent credit underwriting practices that:

1. Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made;
2. Consider the nature of the markets in which loans will be made;
3. Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral,

and the borrower's character and willingness to repay as agreed;

4. Establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors;

5. Take adequate account of concentration of credit risk; and

6. Are appropriate to the size of the institution and the nature and scope of its activities.

E. *Interest rate exposure.* An institution should:

1. Manage interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities; and

2. Provide for periodic reporting to management and the board of directors regarding interest rate risk with adequate information for management and the board of directors to assess the level of risk.

F. *Asset growth.* An institution's asset growth should be prudent and consider:

1. The source, volatility and use of the funds that support asset growth;

2. Any increase in credit risk or interest rate risk as a result of growth; and

3. The effect of growth on the institution's capital.

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;

2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;

3. Compare problem asset totals to capital;

4. Take appropriate corrective action to resolve problem assets;

5. Consider the size and potential risks of material asset concentrations; and

6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;

2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;

3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;

4. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and

5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

I. *Compensation, fees and benefits.* An institution should maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the institution.

III. Prohibition on Compensation That Constitutes an Unsafe and Unsound Practice

A. Excessive Compensation

Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

1. The combined value of all cash and noncash benefits provided to the individual;

2. The compensation history of the individual and other individuals with comparable expertise at the institution;

3. The financial condition of the institution;

4. Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

5. For postemployment benefits, the projected total cost and benefit to the institution;

6. Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

7. Any other factors the agencies determine to be relevant.

B. *Compensation Leading to Material Financial Loss*

Compensation that could lead to material financial loss to an institution is prohibited as an unsafe and unsound practice.

[1] Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) was added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102–242, 105 Stat. 2236 (1991), and amended by section 956 of the Housing and Community Development Act of 1992, Pub. L. 102–550, 106 Stat. 3895 (1992) and section 318 of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (1994).

[2] For the Office of the Comptroller of the Currency, these regulations appear at 12 CFR Part 30; for the Board of Governors of the Federal Reserve System, these regulations appear at 12 CFR Part 263; and for the Federal Deposit Insurance Corporation, these regulations appear at 12 CFR Part 308, subpart R.

[3] In applying these definitions for savings associations, pursuant to 12 U.S.C. 1464, savings associations shall use the terms ''savings association'' and ''insured savings association'' in place of the terms ''member bank'' and ''insured bank''.

[4] See footnote 3 in section I.B.4. of this appendix.

[5] See footnote 3 in section I.B.4. of this appendix.

Appendix B to Part 364—Interagency Guidelines Establishing Information Security Standards

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I. Introduction

The Interagency Guidelines Establishing Information Security Standards (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1, and sections 501 and 505(b), 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* The Guidelines apply to customer information maintained by or on behalf of, and to the disposal of consumer information by or on the behalf of, entities over which the Federal Deposit Insurance Corporation (FDIC) has authority. Such entities, referred to as ''insured depository institution'' or ''institution'' are banks insured by the FDIC (other than members of the Federal Reserve System), state savings associations insured by the FDIC, insured state branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

B. *Preservation of Existing Authority.* Neither section 39 nor these Guidelines in any way limit the authority of the FDIC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. The FDIC may take action under section 39 and these Guidelines independently of, in conjunction with, or in addition to, any other enforcement action available to the FDIC.

C. *Definitions.* 1. Except as modified in the Guidelines, or unless the context otherwise requires, the terms used in these Guidelines have the same meanings as set forth in sections 3 and 39 of the Federal Deposit Insurance Act (12 U.S.C. 1813 and 1831p–1).

2. For purposes of the Guidelines, the following definitions apply:

a. *Board of directors,* in the case of a branch or agency of a foreign bank, means the

managing official in charge of the branch or agency.

b. *Consumer Information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the institution for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not personally identify an individual.

i. *Examples:* (1) *Consumer information* includes:

(A) A consumer report that an institution obtains;

(B) information from a consumer report that the institution obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) information from a consumer report that the institution obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) information from a consumer report that the institution obtains about an individual who guarantees a loan (including a loan to a business entity); or

(E) information from a consumer report that the institution obtains about an employee or prospective employee.

(2) *Consumer information* does not include:

(A) aggregate information, such as the mean score, derived from a group of consumer reports; or

(B) blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

d. *Customer* means any customer of the institution as defined in § 332.3(h) of this chapter.

e. *Customer information* means any record containing nonpublic personal information, as defined in § 332.3(n) of this chapter, about a customer, whether in paper, electronic, or other form, that is maintained by or on behalf of the institution.

f. *Customer information systems* means any methods used to access, collect, store, use, transmit, protect, or dispose of customer information.

g. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the institution.

II. Standards for Information Security

A. *Information Security Program.* Each insured depository institution shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the institution and the nature and scope of its activities. While all parts of the institution are not required to implement a uniform set of policies, all elements of the information security program must be coordinated.

B. *Objectives.* An institution's information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information;

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer; and

4 Ensure the proper disposal of customer information and consumer information.

III. Development and Implementation of Information Security Program

A. *Involve the Board of Directors.* The board of directors or an appropriate committee of the board of each insured depository institution shall:

1. Approve the institution's written information security program; and

2. Oversee the development, implementation, and maintenance of the institution's information security program, including assigning specific responsibility for its implementation and reviewing reports from management.

B. *Assess Risk.*

Each institution shall:

1. Identify reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems.

2. Assess the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information.

3. Assess the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.

C. *Manage and Control Risk.* Each institution shall:

1. Design its information security program to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the institution's activities. Each institution must consider whether the following security measures are appropriate for the institution and, if so, adopt those measures the institution concludes are appropriate:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means.

b. Access restrictions at physical locations containing customer information, such as buildings, computer facilities, and records storage facilities to permit access only to authorized individuals;

c. Encryption of electronic customer information, including while in transit or in storage on networks or systems to which unauthorized individuals may have access;

d. Procedures designed to ensure that customer information system modifications are consistent with the institution's information security program;

e. Dual control procedures, segregation of duties, and employee background checks for employees with responsibilities for or access to customer information;

f. Monitoring systems and procedures to detect actual and attempted attacks on or intrusions into customer information systems;

g. Response programs that specify actions to be taken when the institution suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies; and

h. Measures to protect against destruction, loss, or damage of customer information due to potential environmental hazards, such as fire and water damage or technological failures.

2. Train staff to implement the institution's information security program.

3. Regularly test the key controls, systems and procedures of the information security program. The frequency and nature of such tests should be determined by the institution's risk assessment. Tests should be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security programs.

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements of this paragraph III.

D. *Oversee Service Provider Arrangements.* Each institution shall:

1. Exercise appropriate due diligence in selecting its service providers;

2. Require its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines; and

3. Where indicated by the institution's risk assessment, monitor its service providers to confirm that they have satisfied their obligations as required by paragraph D.2. As part of this monitoring, an institution should review audits, summaries of test results, or other equivalent evaluations of its service providers.

E. *Adjust the Program.* Each institution shall monitor, evaluate, and adjust, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the institution's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

F. *Report to the Board.* Each institution shall report to its board or an appropriate committee of the board at least annually. This report should describe the overall status of the information security program and the institution's compliance with these Guidelines. The report, which will vary depending upon the complexity of each institution's program should discuss material matters related to its program, addressing issues such as: Risk assessment; risk management and control decisions; service provider arrangements; results of testing;

security breaches or violations, and management's responses; and recommendations for changes in the information security program.

G. *Implement the Standards.* 1. *Effective date.* Each institution must implement an information security program pursuant to these Guidelines by July 1, 2001.

2. *Two-year grandfathering of agreements with service providers.* Until July 1, 2003, a contract that an institution has entered into with a service provider to perform services for it or functions on its behalf, satisfies the provisions of paragraph III.D., even if the contract does not include a requirement that the servicer maintain the security and confidentiality of customer information as long as the institution entered into the contract on or before March 5, 2001.

3. *Effective date for measures relating to the disposal of consumer information.* Each institution must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., an institution's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

Supplement A to Appendix B to Part 364 Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

I. Background

This Guidance [1] interprets section 501(b) of the Gramm-Leach-Bliley Act (GLBA) and the Interagency Guidelines Establishing Information Security Standards (the Security Guidelines) [2] and describes response programs, including customer notification procedures, that a financial institution should develop and implement to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The scope of, and definitions of terms used in, this Guidance are identical to those of the Security Guidelines. For example, the term ''customer information'' is the same term used in the Security Guidelines, and means any record containing nonpublic personal information about a customer, whether in paper, electronic, or other form, maintained by or on behalf of the institution.

A. Interagency Security Guidelines

Section 501(b) of the GLBA required the Agencies to establish appropriate standards for financial institutions subject to their jurisdiction that include administrative, technical, and physical safeguards, to protect the security and confidentiality of customer information. Accordingly, the Agencies issued Security Guidelines requiring every financial institution to have an information security program designed to:

1. Ensure the security and confidentiality of customer information;

2. Protect against any anticipated threats or hazards to the security or integrity of such information; and

3. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

B. Risk Assessment and Controls

1. The Security Guidelines direct every financial institution to assess the following risks, among others, when developing its information security program:

a. Reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;

b. The likelihood and potential damage of threats, taking into consideration the sensitivity of customer information; and

c. The sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.[3]

2. Following the assessment of these risks, the Security Guidelines require a financial institution to design a program to address the identified risks. The particular security measures an institution should adopt will depend upon the risks presented by the complexity and scope of its business. At a minimum, the financial institution is required to consider the specific security measures enumerated in the Security Guidelines,[4] and adopt those that are appropriate for the institution, including:

a. Access controls on customer information systems, including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing customer information to unauthorized individuals who may seek to obtain this information through fraudulent means;

b. Background checks for employees with responsibilities for access to customer information; and

c. Response programs that specify actions to be taken when the financial institution suspects or detects that unauthorized individuals have gained access to customer information systems, including appropriate reports to regulatory and law enforcement agencies.[5]

C. Service Providers

The Security Guidelines direct every financial institution to require its service providers by contract to implement appropriate measures designed to protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customers.[6]

II. Response Program

Millions of Americans, throughout the country, have been victims of identity theft.[7] Identity thieves misuse personal information they obtain from a number of sources, including financial institutions, to perpetrate identity theft. Therefore, financial institutions should take preventative measures to safeguard customer information against attempts to gain unauthorized access to the information. For example, financial institutions should place access controls on customer information systems and conduct background checks for employees who are authorized to access customer information.[8] However, every financial institution should also develop and implement a risk-based response program to address incidents of unauthorized access to customer information in customer information systems [9] that occur nonetheless. A response program should be a key part of an institution's information security program.[10] The program should be appropriate to the size and complexity of the institution and the nature and scope of its activities.

In addition, each institution should be able to address incidents of unauthorized access to customer information in customer information systems maintained by its domestic and foreign service providers. Therefore, consistent with the obligations in the Guidelines that relate to these arrangements, and with existing guidance on this topic issued by the Agencies,[11] an institution's contract with its service provider should require the service provider to take appropriate actions to address incidents of unauthorized access to the financial institution's customer information, including notification to the institution as soon as possible of any such incident, to enable the institution to expeditiously implement its response program.

A. Components of a Response Program

1. At a minimum, an institution's response program should contain procedures for the following:

a. Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;

b. Notifying its primary Federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of *sensitive* customer information, as defined below;

c. Consistent with the Agencies' Suspicious Activity Report (''SAR'') regulations,[12] notifying appropriate law enforcement authorities, in addition to filing a timely SAR in situations involving Federal criminal violations requiring immediate attention, such as when a reportable violation is ongoing;

d. Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information, for example, by monitoring, freezing, or closing affected accounts, while preserving records and other evidence; [13] and

e. Notifying customers when warranted.

2. Where an incident of unauthorized access to customer information involves customer information systems maintained by an institution's service providers, it is the responsibility of the financial institution to notify the institution's customers and regulator. However, an institution may authorize or contract with its service provider to notify the institutions' customers or regulator on its behalf.

III. Customer Notice

Financial institutions have an affirmative duty to protect their customers' information against unauthorized access or use. Notifying

customers of a security incident involving the unauthorized access or use of the customer's information in accordance with the standard set forth below is a key part of that duty. Timely notification of customers is important to manage an institution's reputation risk. Effective notice also may reduce an institution's legal risk, assist in maintaining good customer relations, and enable the institution's customers to take steps to protect themselves against the consequences of identity theft. When customer notification is warranted, an institution may not forgo notifying its customers of an incident because the institution believes that it may be potentially embarrassed or inconvenienced by doing so.

A. Standard for Providing Notice

When a financial institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to promptly determine the likelihood that the information has been or will be misused. If the institution determines that misuse of its information about a customer has occurred or is reasonably possible, it should notify the affected customer as soon as possible. Customer notice may be delayed if an appropriate law enforcement agency determines that notification will interfere with a criminal investigation and provides the institution with a written request for the delay. However, the institution should notify its customers as soon as notification will no longer interfere with the investigation.

1. Sensitive Customer Information

Under the Guidelines, an institution must protect against unauthorized access to or use of customer information that could result in substantial harm or inconvenience to any customer. Substantial harm or inconvenience is most likely to result from improper access to *sensitive customer information* because this type of information is most likely to be misused, as in the commission of identity theft. For purposes of this Guidance, *sensitive customer information* means a customer's name, address, or telephone number, in conjunction with the customer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account. *Sensitive customer information* also includes any combination of components of customer information that would allow someone to log onto or access the customer's account, such as user name or password or password and account number.

2. Affected Customers

If a financial institution, based upon its investigation, can determine from its logs or other data precisely which customers' information has been improperly accessed, it may limit notification to those customers with regard to whom the institution determines that misuse of their information has occurred or is reasonably possible. However, there may be situations where the institution determines that a group of files has been accessed improperly, but is unable to identify which specific customers' information has been accessed. If the circumstances of the unauthorized access lead the institution to determine that misuse of the information is reasonably possible, it should notify all customers in the group.

B. Content of Customer Notice

1. Customer notice should be given in a clear and conspicuous manner. The notice should describe the incident in general terms and the type of customer information that was the subject of unauthorized access or use. It also should generally describe what the institution has done to protect the customers' information from further unauthorized access. In addition, it should include a telephone number that customers can call for further information and assistance.[14] The notice also should remind customers of the need to remain vigilant over the next twelve to twenty-four months, and to promptly report incidents of suspected identify theft to the institution. The notice should include the following additional items, when appropriate:

a. A recommendation that the customer review account statements and immediately report any suspicious activity to the institution;

b. A description of fraud alerts and an explanation of how the customer may place a fraud alert in the customer's consumer reports to put the customer's creditors on notice that the customer may be a victim of fraud;

c. A recommendation that the customer periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;

d. An explanation of how the customer may obtain a credit report free of charge; and

e. Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identity theft to the FTC, and should provide the FTC's Web site address and toll-free telephone number that customers may use to obtain the identity theft guidance and report suspected incidents of identity theft.[15]

2. The Agencies encourage financial institutions to notify the nationwide consumer reporting agencies prior to sending notices to a large number of customers that include contact information for the reporting agencies.

C. Delivery of Customer Notice

Customer notice should be delivered in any manner designed to ensure that a customer can reasonably be expected to receive it. For example, the institution may choose to contact all customers affected by telephone or by mail, or by electronic mail for those customers for whom it has a valid email address and who have agreed to receive communications electronically.

[1] This Guidance was jointly issued by the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS). Pursuant to 12 U.S.C. 5412, the OTS is no longer a party to this Guidance.

[2] 12 CFR part 30, app. B (OCC); 12 CFR part 208, app. D–2 and part 225, app. F (Board); and 12 CFR part 364, app. B (FDIC). The ''Interagency Guidelines Establishing Information Security Standards'' were formerly known as ''The Interagency Guidelines Establishing Standards for Safeguarding Customer Information.''

[3] *See* Security Guidelines, III.B.

[4] *See* Security Guidelines, III.C.

[5] *See* Security Guidelines, III.C.

[6] *See* Security Guidelines, II.B, and III.D. Further, the Agencies note that, in addition to contractual obligations to a financial institution, a service provider may be required to implement its own comprehensive information security program in accordance with the Safeguards Rule promulgated by the Federal Trade Commission (FTC), 12 CFR part 314.

[7] The FTC estimates that nearly 10 million Americans discovered they were victims of some form of identity theft in 2002. *See* The Federal Trade Commission. *Identity Theft Survey Report* (September 2003), available at *http://www.ftc.gov/os/2003/09/synovatereport.pdf.*

[8] Institutions should also conduct background checks of employees to ensure that the institution does not violate 12 U.S.C. 1829, which prohibits an institution from hiring an individual convicted of certain criminal offenses or who is subject to a prohibition order under 12 U.S.C. 1818(e)(6).

[9] Under the Guidelines, an institution's *customer information systems* consist of all of the methods used to access, collect, store, use, transmit, protect, or dispose of customer information, including the systems maintained by its service providers. *See* Security Guidelines, I.C.2.d.

[10] *See* FFIEC Information Technology Examination Handbook, Information Security Booklet, Dec. 2002 available at *http://ithandbook.ffiec.gov/it-booklets/information-security.aspx.* Federal Reserve SR 97–32, Sound Practice Guidance for Information Security for Networks, Dec. 4, 1997; OCC Bulletin 2000–14, ''Infrastructure Threats—Intrusion Risks'' (May 15, 2000), for additional guidance on preventing, detecting, and responding to intrusions into financial institutions computer systems.

[11] *See* Federal Reserve SR Ltr. 13-19, Guidance on Managing Outsourcing Risk, Dec. 5, 2013; OCC Bulletin 2013–29, ''Third-Party Relationships—Risk Management Guidance,'' Oct. 30, 2013; and FDIC FIL 44–08, Guidance for Managing Third Party Risk, June 6, 2008 and FIL 68–99, Risk Assessment Tools and Practices for Information System Security, July 7, 1999.

[12] An institution's obligations to file a SAR is set out in the Agencies' SAR regulations and Agency guidance. *See, for example, 12 CFR 21.11* (national banks, Federal branches and agencies); 12 CFR 163.180 (Federal savings associations); 12 CFR 208.62 (State member banks); 12 CFR 211.5(k) (Edge and agreement corporations); 12 CFR 211.24(f) (uninsured State branches and agencies of foreign banks); 12 CFR 225.4(f) (bank holding companies and their nonbank subsidiaries); and 12 CFR part 353 (FDIC-supervised institutions). National banks must file SARs in connection with computer intrusions and

other computer crimes. *See* OCC Bulletin 2000–14, ''Infrastructure Threats—Intrusion Risks'' (May 15, 2000); Advisory Letter 97–9, ''Reporting Computer Related Crimes'' (November 19, 1997) (general guidance still applicable though instructions for new SAR form published in 65 FR 1229, 1230 (January 7, 2000)). *See also* Federal Reserve SR 01–11, Identity Theft and Pretext Calling, Apr. 26, 2001.

[13] *See* FFIEC Information Technology Examination Handbook, Information Security Booklet, Dec. 2002, pp. 68–74.

[14] The institution should, therefore, ensure that it has reasonable policies and procedures in place, including trained personnel, to respond appropriately to customer inquiries and requests for assistance.

[15] Currently, the FTC Web site for the ID Theft brochure and the FTC Hotline phone number are *http://www.consumer.gov/idtheft* and 1–877–IDTHEFT. The institution may also refer customers to any materials developed pursuant to section 151(b) of the FACT Act (educational materials developed by the FTC to teach the public how to prevent identity theft).

PART 391—FORMER OFFICE OF THRIFT SUPERVISION REGULATIONS

■ 4. The authority citation for part 391 is revised to read as follows:

Authority: 12 U.S.C. 1819 (Tenth).

Subpart A also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; 1881-1884; 15 U.S.C. 1681w; 15 U.S.C. 6801; 6805.

Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p-1; and 1881-1884; 15 U.S.C. 1681m; 1681w.

Subpart D also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 42 U.S.C. 4012a; 4104a; 4104b; 4106; 4128.

Subpart E also issued under 12 U.S.C. 1467a; 1468; 1817; 1831i.

Subpart B—[Removed and Reserved]

■ 5. Remove and reserve subpart B consisting of §§ 391.10 through 391.14, and Appendices A and B.

Dated at Washington, DC, this 22nd day of October 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27293 Filed 10–27–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 334 and 391

RIN 3064–AE29

Removal of Transferred OTS Regulations Regarding Fair Credit Reporting and Amendments; Amendment to the ''Creditor'' Definition in Identity Theft Red Flags Rule; Removal of FDIC Regulations Regarding Fair Credit Reporting Transferred to the Consumer Financial Protection Bureau

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule (Final Rule) to make several amendments to its regulations covering ''Fair Credit Reporting.'' The amendments conform FDIC Fair Credit Reporting regulations to the Dodd-Frank Act by consolidating the regulations for all institutions for which the FDIC is the appropriate Federal banking agency into a single part. The amendments also address the role of the Consumer Financial Protection Bureau in promulgating rules relating to Fair Credit Reporting.

DATES: The Final Rule is effective November 27, 2015.

FOR FURTHER INFORMATION CONTACT: Sandra Barker, Senior Policy Analyst, Division of Depositor and Consumer Protection, (202) 898–3615 or *sabarker@fdic.gov;* Jeffrey Kopchik, Senior Policy Analyst, Division of Risk Management Supervision, (703) 254–0459 or *jkopchik@fdic.gov;* Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424 or *rischwartz@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Removal of Transferred OTS Regulations Regarding Fair Credit Reporting and Amendments to 12 CFR Part 334 of FDIC's Rules and Regulations

A. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the OTS were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies.[2] Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provided the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provided that if such materials were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[3]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the FDI Act and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations whose deposits are insured by the FDIC (State savings associations) to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify and

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] Section 312 of the Dodd-Frank Act, codified at 12 U.S.C. 5412.

[3] 76 FR 39247 (July 6, 2011).

rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

As noted, on June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011.[4] When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC governed OTS oversight of the Fair Credit Reporting regulations, which implemented the Fair Credit Reporting Act (FCRA),[5] in the context of State savings associations. The OTS rule, formerly found at 12 CFR part 571, was transferred to the FDIC[6] and was moved to the FDIC's rules at part 391, subpart C, entitled ''Fair Credit Reporting.'' Before the transfer of the OTS rules and continuing today, the FDIC's rules contained part 334, also entitled ''Fair Credit Reporting,'' a rule governing FDIC regulation with respect to IDIs for which the FDIC has been designated the appropriate Federal banking agency. After careful review and comparison of part 391, subpart C and part 334, the FDIC rescinds part 391, subpart C, because, as discussed below, it is substantively redundant to existing part 334 and simultaneously makes technical conforming edits to our existing rule.

B. FDIC's Existing 12 CFR Section 334.2 and Former OTS's 12 CFR Section 571.2 (transferred to FDIC's Part 391, Subpart C, as 12 CFR Section 391.20)

On November 22, 2005, the FDIC, OTS, OCC, FRB and NCUA (''the Agencies'') jointly published rules in the **Federal Register**[7] to implement section 411 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act),[8] which amended section 604 of the FCRA.[9] Section 411 of the FACT Act generally limited the ability of creditors to obtain and use medical information in connection with credit eligibility determinations and the ability of consumer reporting agencies to disclose medical information, as well as restricting the sharing of medical information and other medically related information with affiliates.[10] That section required the Agencies to issue regulations on several aspects related to the medical privacy amendment.

Although Dodd-Frank Act transferred the 2005 medical privacy regulations to the CFPB, as discussed below, the Agencies issued a regulation in the ''General Provisions'' portion of the Fair Credit Reporting regulations that remains in effect in the Agencies' regulations today.

That regulation related to ''examples'' issued in any regulation in the Fair Credit Reporting part. The OTS regulation, stated: ''The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise in this part.''[11] The concurrently issued FDIC regulation contains identical language.[12]

The OTS regulation issued at § 391.20 was amended slightly because it was placed in a subpart of part 391: the word ''part'' was replace by ''subpart.'' Nevertheless, the portion of the OTS regulation that applied to State savings associations and their subsidiaries, originally codified at 12 CFR part 571 and subsequently transferred to FDIC's part 391, subpart C, is substantively similar to the current FDIC regulations codified at 12 CFR part 334. Therefore, to eliminate redundancy and streamline its regulations, the FDIC rescinds and removes § 391.20.

C. FDIC's Existing 12 CFR Section 334.83 and Former OTS's 12 CFR Section 571.83 (transferred to FDIC's Part 391, Subpart C, as 12 CFR Section 391.21)

Section 216 of the FACT Act added a new section 628 to the FCRA that, in general was designed to protect a consumer against the risks associated with the unauthorized access to information about a consumer contained in a consumer report, such as fraud and related crimes including identity theft.[13] Specifically, section 216 required each of the Agencies, including the Federal Trade Commission (FTC), to adopt a regulation with respect to the entities subject to its enforcement authority ''requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from a consumer report for a business purpose to properly dispose of any such information or compilation.''[14] The FDIC, OCC, FRB and OTS jointly published their rules in the **Federal Register** on December 28, 2004.[15] The FDIC and OTS regulations were identical.[16] Neither regulation contained a scope provision, because each regulation referred to the respective agency's version of the Interagency Guidelines Establishing Information Security Standards, which itself contained a scope provision.[17]

In 2007, the Agencies jointly issued rules pursuant to section 114 of the FACT Act, which dealt with identity theft ''red flag'' rules and rules on the duties of credit card issuers to validate notifications of changes of address under certain circumstances,[18] as discussed in more detail below. Although those regulations were nearly identical from agency to agency, the OTS unilaterally amended its disposal regulation, as part of that rulemaking, to include a scope provision.[19] The OTS explained that that amendment was nonsubstantive and technical in nature, caused by the placement of the address discrepancy regulation in the same subpart as the disposal regulation.[20] No other Agency amended its disposal regulation.

[4] 76 FR 47652 (Aug. 5, 2011).

[5] 15 U.S.C. 1681a, *et seq.*

[6] The Dodd-Frank Act transferred the rule-writing authority of several parts of the ''Fair Credit Reporting'' regulations contained in parts 334 and 571, as well as the regulations of the OCC, FRB, and National Credit Union Administration (''NCUA''), to the newly created CFPB. *See* sections 1061 and 1088, codified at 12 U.S.C. 5581, 15 U.S.C. 1681 *et seq*. When the OTS regulations for state savings associations were transferred to part 391, only those portions of the regulation that were retained by the FDIC were included.

[7] 70 FR 70664 (Nov. 22, 2005).

[8] Public Law 108–159, 117 Stat. 1952, 1999–2002 (2003).

[9] 15 U.S.C. 1681b.

[10] 70 FR at 70664.

[11] 12 CFR 571.2.

[12] 12 CFR 334.2.

[13] Public Law 108–159, 117 Stat. at 1985–86; 15 U.S.C. 1681w.

[14] *Id.*

[15] 69 FR 77610 (Dec. 28, 2004).

[16] 12 CFR 334.83, 571.83 (2004).

[17] *Id.* (both regulations stated, in relevant part, ''You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Information Security Standards . . . to the extent the Guidelines are applicable to you.''). Both the FDIC's and the OTS's Interagency Guidelines were placed in the Safety and Soundness regulations, parts 364 and 570, respectively.

[18] 72 FR 63718 (Nov. 9, 2007). That rulemaking also included rules issued pursuant to section 315 of the FACT Act, which required the Agencies to issue joint regulations that provide guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of an address discrepancy. The rule-writing authority for that rule was given to the CFPB in the Dodd-Frank Act.

[19] *See* 12 CFR 571.83(a) (2007).

[20] 72 FR at 63739.

After careful comparison of the FDIC's disposal regulation with the transferred OTS rule in part 391, subpart C, the FDIC has concluded that, with the exception of the scope provision, which now includes ''State savings associations whose deposits are insured by the Federal Deposit Insurance Corporation,'' [21] the transferred OTS rule is substantively redundant. Therefore, based on the foregoing, the FDIC rescinds and removes from the Code of Federal Regulations the rule located at part 391, subpart C and makes minor conforming changes to incorporate State savings associations.

There were several ways to deal with this technical difference between the FDIC and the OTS disposal regulations, including adding a scope provision to the FDIC's disposal regulation at § 334.83, an idea that was not proposed back in 2007. Instead, because of the direct reference in the disposal regulation to the Interagency Guidelines Establishing Information Security Standards, the FDIC, through a separate final rule relating to the FDIC's Safety and Soundness regulations, 12 CFR part 364, to be issued shortly, is adopting a change in the scope provision of the FDIC's version to cover State savings associations.

As a backstop for this and any future fair credit regulations, the FDIC is also making a change to § 334.1(b), the general scope provision of the FDIC's Fair Credit Reporting regulations, to cover State savings associations. The FDIC is also adding a definition of ''State savings association'' to § 334.3. That definition would have the same meaning as in section 3(b)(3) of the FDI Act, 12 U.S.C. 1813(b)(3).[22]

D. FDIC's Existing 12 CFR Sections 334.90 and 334.91 and Part 334, Appendix J, and Former OTS's 12 CFR Sections 571.82 and 571.90 and Part 571, Appendix J (transferred to FDIC's Part 391, Subpart C, as 12 CFR Sections 391.22 and 391.23 and Part 391, Subpart C, Appendix)

As discussed above (and in some detail below), the Agencies, in 2007, jointly issued rules pursuant to section 114 of the FACT Act, which dealt with identity theft ''red flag'' rules and rules on the duties of credit card issuers to validate notifications of changes of address under certain circumstances.[23] In addition to the rules required in section 114, the Agencies also jointly issued Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation.

The FDIC's ''red flag'' rule, styled as ''duties regarding the detection, prevention, and mitigation of identity theft,'' was issued as § 334.90. The concurrently issued OTS rule was issued as § 571.90. That rule was later transferred to the FDIC rules as § 391.22. Apart from their scope provisions, the FDIC and the OTS ''red flag'' rules are substantively identical. As with the disposal rule, the scope of the transferred OTS rule covers ''a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation.'' [24]

The FDIC's ''duties of card issuers regarding changes of address'' regulation was issued as § 334.91. The concurrently issued OTS rule was issued as § 571.91. That rule was later transferred to the FDIC rules as § 391.23. As with the ''red flag'' rules, apart from their scope provisions, the FDIC and OTS change of address rules are substantively identical. The OTS rule covers ''an issuer of a debit or credit card (card issuer) that is a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation.'' [25]

Finally, the FDIC's Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation was issued as part 334, appendix J. The concurrently issued OTS guidelines were issued as part 571, appendix J. Those guidelines were later transferred to the FDIC rules as part 391, subpart C, appendix. The FDIC and the OTS guidelines are substantively identical.

After careful comparison of the FDIC's rules and guidelines with the transferred OTS rules and guidelines in part 391, subpart C, the FDIC has concluded that, with the exception of the scope provisions, as set out above, the transferred OTS rules and guidelines are substantively redundant. Therefore, based on the foregoing, the FDIC rescinds and removes from the Code of Federal Regulations the rules located at §§ 391.22 and 391.23 and guidelines located at part 391, subpart C, appendix, and makes minor conforming changes in §§ 334.90 and 334.91 to incorporate State savings associations.

II. Amendments to Fair Credit Red Flag Identity Theft Rule and Guidelines

As discussed above, on November 9, 2007, the FDIC, OCC, FRB, NCUA, OTS, and FTC published final rules and guidelines [26] to implement the identity theft red flags provisions of section 114 of the FACT Act.[27] In addition to these agencies, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) obtained rulemaking authority for these regulations under section 615 of the FCRA, as amended by section 1088 of the Dodd-Frank Act.

Section 615 directed the covered Agencies to issue joint regulations and guidelines requiring ''financial institutions'' and ''creditors'' to develop and implement a written identity theft program to identify, detect, and respond to possible risks of identity theft relevant to them.

The 2007 final interagency rule (the Red Flags Rule) [28] included a definition of ''financial institution,'' as set forth in in section 603(t) of the FCRA, as amended in section 111 of the FACT Act.[29] That term includes ''a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.'' [30]

The Red Flags Rule [31] also included a definition of ''creditor,'' as set forth in section 603(r)(5) of the FCRA, as amended in section 111 of the FACT Act.[32] That definition referenced the definition of ''creditor'' in section 702 of the Equal Credit Opportunity Act (''ECOA''). The ECOA defines the term ''creditor'' broadly as ''any person who regularly extends, renews, or continues credit; any person who regularly

[21] The scope provision of the original 2007 amendment covered all savings associations with deposits insured by the FDIC and Federal savings associations' operating subsidiaries. When the OTS disposal regulation was transferred to section 391.21, it was amended to state that the scope provision applies to ''State savings associations whose deposits are insured by the Federal Deposit Insurance Corporation,'' consistent with the authority given to the FDIC in the Dodd-Frank Act.

[22] ''The term 'State savings association' means—(A) any building and loan association, savings and loan association, or homestead association; or (B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2) of this section), which is organized and operating according to the laws of the State (as defined in subsection (a)(3) of this section) in which it is chartered or organized.'' 12 U.S.C. 1813(b)(3).

[23] 72 FR 63718 (Nov. 9, 2007).

[24] 12 CFR 391.22(a).

[25] 12 CFR 391.23(a).

[26] 72 FR 63718 (Nov. 9, 2007).

[27] 15 U.S.C. 1681m(e).

[28] 12 CFR 334.90(b)(7).

[29] 15 U.S.C. 1681a(t).

[30] *Id.*

[31] 12 CFR 334.90(b)(5)

[32] 15 U.S.C. 1681a(r)(5).

arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit.'' [33] The ECOA further defines ''credit'' as ''the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.'' [34] Regulation B, promulgated under the ECOA, defines ''credit'' in similar terms: ''the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.'' [35]

The current FDIC definition of ''creditor'' also expressly includes ''lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies,'' [36] the same definition as the joint rules issued by the OCC, FRB, OTS and FTC.

Since the scope of the FDIC's red flag regulation covers ''an insured state nonmember bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisors),'' [37] the vast majority, but not all, of the entities covered by the FDIC regulation fall under the ''financial institutions'' definition.[38]

In contrast, the vast majority of the entities supervised by the FTC's rule would be covered by the statutory ''creditor'' definition. As such, the FTC had issued guidance on the scope of that definition. For example, in a set of answers to frequently asked questions issued in June, 2009, the FTC stated: ''Under the [Red Flags Rule], the definition of 'creditor' is broad and includes businesses or organizations that regularly provide goods or services first and allow customers to pay later. . . . Examples of groups that may fall within this definition are utilities, health care providers, lawyers, accountants, and other professionals, and telecommunications companies.'' [39]

The FTC had also stated in the preamble to the final Red Flags Rule that a ''broad scope of entities'' was covered.[40] Similar guidance was provided in policy statements issued in 2008 and early 2009.[41] This guidance led to a law suit brought by the American Bar Association against the FTC alleging that the application of the rules to attorneys exceeded FTC's authority. Similar complaints were brought by the American Medical Association and other professionals.

In December 2010, Congress enacted the Red Flag Program Clarification Act (Clarification Act), 15 U.S.C. 1681m(e)(4), which narrowed the scope of entities covered as ''creditors'' under the Red Flags Rule.[42] The Clarification Act retained the ECOA definition of ''creditor,'' but generally limited the application of the Red Flags Rule to those ECOA creditors that ''regularly and in the ordinary course of business'' engaged in at least one of the following three types of conduct:

1. Obtaining or using consumer reports, directly or indirectly, in connection with a credit transaction; [43]

2. Furnishing information to consumer reporting agencies in connection with a credit transaction; [44] or

3. Advancing funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person.[45]

The Clarification Act also expressly excluded creditors that advanced funds on behalf of a person for expenses incidental to a service provided by the creditor to that person.[46]

Finally, in addition to limiting the scope of coverage for ''creditors'' by creating these specified categories, the Clarification Act empowered the Agencies to determine through a future rulemaking whether to include any other type of creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft.[47]

When amending its Red Flag ''creditor'' definition in 2012, the FTC choose not to use its discretionary rulemaking to extend coverage of the Red Flags Rule to additional creditors and merely cited to the Clarification Act statutory definition.[48] The FDIC is now adopting a similar result, to amend the ''creditor'' definition in its Red Flags Rule to expressly cite to the Clarification Act statutory provision, 15 U.S.C. 1681m(e)(4).

The FDIC has conferred with staff from the other Federal banking agencies, who do not object to the issuance of this final rulemaking to amend the Red Flags Rule to conform it to the Clarification Act. In fact, in May, 2014, both the OCC and the Federal Reserve Board issued final rules making the conforming change.[49] The SEC and CFTC have previously issued final rules under section 615 of FCRA that included a definition of ''creditor'' as set forth in the Clarification Act.[50]

The FDIC is also adopting a technical amendment to supplement A to the guidelines that accompanied the Red Flags Rule consistent with the amendments, discussed below, to vacate the FDIC Fair Credit Reporting regulations with rule writing authority transferred to the CFPB.[51] In supplement A, the Agencies provided a list of red flags to be considered by the entities covered by the rule. One of those red flags was ''[a] consumer reporting agency provides a notice of address discrepancy, as defined in § 334.82(b) of this part.'' [52] Since the FDIC is vacating its regulation at 12 CFR 334.82, the FDIC is changing the citation in that red flag to the CFPB regulation: § 1022.82(b).

III. Removal of FDIC Fair Credit Regulations Transferred to the Consumer Financial Protection Bureau

In amending the FCRA, the FACT Act gave the FDIC, along with the other Federal banking regulators (and, in some cases, the FTC and the SEC), rule writing authority for a variety of Fair Credit Reporting regulations. Since 2004, those regulations have been promulgated on an inter-agency basis as follows:

- 2004: Disposal of Consumer Information, 12 CFR 334.83, implementing FACT Act section 216 (FCRA section 628 (15 U.S.C. 1681w));
- 2005: Medical Information, 12 CFR part 334, subpart D, implementing FACT Act section 411 (FCRA section 604(g)(5) (15 U.S.C. 1681b(g)(5));
- 2007: Affiliate Marketing, 12 CFR part 334, subpart C and appendix C,

[33] 15 U.S.C. 1691a(e).

[34] 15 U.S.C. 1691a(d).

[35] 12 CFR 1002.2(j).

[36] 12 CFR 334.90(b)(5).

[37] 12 CFR 334.90(a).

[38] This result would be the same if the new scope provision of the Red Flags Rule as proposed in this notice of proposed rulemaking—which would add ''a State savings association whose deposits are insured by the Federal Deposit Insurance Corporation''—is finalized.

[39] *See American Bar Ass'n* v. *Federal Trade Comm'n* (''*ABA* v. *FTC*''), 671 F. Supp. 2d 64, 70 (D.D.C. 2009) (quoting Red Flags Rule: Frequently Asked Questions, *http://www.ftc.gov/bcp/edu/microsites/redflagsrule/faqs.shtm* (since amended)), *vacated as moot,* 636 F.3d 641 (D.C. Cir. 2011).

[40] 72 FR at 63741.

[41] *See ABA* v. *FTC,* 671 F. Supp. 2d at 69–70.

[42] Pub. L. 111–319, 124 Stat. 3457 (2010).

[43] 15 U.S.C. 1681m(e)(4)(A)(i).

[44] 15 U.S.C. 1681m(e)(4)(A)(ii).

[45] 15 U.S.C. 1681m(e)(4)(A)(iii).

[46] 15 U.S.C. 1681m(e)(4)(B).

[47] 15 U.S.C. 1681m(e)(4)(C).

[48] *See* 77 FR 72712 (Dec. 6, 2012).

[49] *See* 79 FR 28393, 28400 (May 16, 2014) (OCC); 79 FR 30709, 30711 (May 29, 2014) (Federal Reserve Board).

[50] *See* 78 FR 23638 (Apr. 19, 2013) (SEC and CFTC joint final rules; the CFTC ''creditor'' definition cited the Clarification Act provision, but also specifically listed the covered entities).

[51] 12 CFR part 334, supplement A to appendix J.

[52] *Id.* at 3.

implementing FACT Act section 214 (FCRA section 624 note (15 U.S.C. 1681s–3 note));

- 2007: Identity Theft Red Flags, 12 CFR part 334, subpart J and appendix J, implementing FACT Act section 114 (FCRA section 615(e) (15 U.S.C. 1681m(e)); [53]
- 2007: Address Discrepancy, 12 CFR 334.82, implementing FACT Act section 315 (FCRA section 605(h) (15 U.S.C. 1681c(h)); and
- 2009: Duties of Furnishers of Information, 12 CFR part 334, subpart E and appendix E, implementing FACT Act section 312 (FCRA section 623(e) (15 U.S.C. 1681S–2(e)).

Title X of the Dodd-Frank Act amended a number of consumer financial protection laws, including provisions of the FCRA. In addition to substantive amendments, the Dodd-Frank Act transferred rulemaking authority from the FDIC, FRB, OCC, FTC, NCUA, and OTS for several provisions of the ''Fair Credit Reporting'' regulations to the CFPB, effective July 21, 2011.[54] These include the following regulations listed above: medical information; affiliate marketing; address discrepancy; and duties of furnishers of information. Those regulations were covered under 12 CFR part 334 subparts C, D, and E, as well as 12 CFR 334.82 in subpart I. The transfer also included the related Appendices, 12 CFR part 334, Appendices C and E. On December 21, 2011, the CFPB published in the **Federal Register** an interim final rule Regulation V, which implemented the Dodd-Frank Act amendments to the FCRA with regard to those regulations and appendices.

As discussed above, the Dodd-Frank Act did not transfer all rulemaking authority under the FCRA. Specifically, the Act did not transfer to the CFPB the authority to promulgate: rules on the disposal of consumer information; [55] rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation; [56] and rules on the duties of card issuers regarding changes of address.[57] These existing provisions are not included in the Bureau's new Regulation V.[58]

As a result of the of rule writing authority transferred to the CFPB, the FDIC rescinds and removes those regulations and appendices covered under the CFPB's Regulation V. In addition to the specific citations set out above, the FDIC is also rescinding and removing those parts of the Purpose and Definition provisions of the ''Fair Credit Reporting'' regulations that related to the substantive regulations transferred to the CFPB.[59]

Even though there is no longer rule writing authority for those ''Fair Credit Reporting'' rules, the FDIC will continue to examine for compliance with the rules and take enforcement action when warranted.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995, 44 U.S.C. 3501–3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

Part of the Final Rule rescinds and removes part 391, subpart C from the FDIC regulations. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by title III of the Dodd-Frank Act. Part 391, subpart C is largely redundant of the FDIC's existing part 334 regarding ''Fair Credit Reporting'' regulations, including appendix J to the part. The FDIC reviewed its burden estimates for the collection at the time it assumed responsibility for supervision of State savings associations transferred from the OTS and determined that no changes to the burden estimates were necessary. This Final Rule will not modify the FDIC's existing collection and does not involve any new collections of information pursuant to the PRA.

The Final Rule also amends §§ 334.83, 334.90, and 334.91 to include State savings associations and their subsidiaries within the scope of part 334. The Final Rule also amends those provisions to define ''State savings association.'' These measures clarify that State savings associations, as well as State nonmember banks are subject to part 334. Thus, these provisions of the Final Rule will not involve any new collections of information under the PRA or impact current burden estimates.

Part of the Final Rule would amend the ''creditor'' definition in the FDIC's Identity Theft Red Flag regulation in conformance with the Clarification Act. The vast majority of entities regulated by the FDIC under the Identity Theft Red Flag regulation fall under the ''financial institution'' definition, and, therefore, would be covered under the rule regardless of the change in the ''creditor'' definition. For any subsidiary of a covered financial institution not covered under the ''financial institution'' definition, the change to the ''creditor'' definition would, arguably, cover fewer, rather than more, entities. Thus, this provision of the Final Rule will not involve any new collections of information under the PRA or substantively impact current burden estimates.

Finally, part of the Final Rule rescinds and removes those portions of 12 CFR part 334 where rule writing authority was transferred to the CFPB. This portion of the Final Rule will also not involve any new collections of information under the PRA or impact current burden estimates.

Based on the foregoing, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), requires that each federal agency either (1) certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million), or (2) prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[60] For the reasons provided below, the FDIC certifies that the Final Rule would not have a significant economic impact on a substantial number of small entities.

As discussed in the proposed rule, part 391, subpart C was transferred from OTS part 571, which governed Fair Credit Reporting. OTS part 571 had been in effect beginning in 2004, and all State savings associations were required to comply with it. Because it is basically redundant of existing part 334 of the FDIC's rules, the FDIC rescinds and removes part 391, subpart C. As a result, all FDIC-supervised institutions—

[53] As amended by the Clarification Act. *See* discussion above.

[54] *See* sections 1061 and 1088 of the Dodd-Frank Act.

[55] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[56] *See* 15 U.S.C. 1681w; section 1088 of the Dodd-Frank Act.

[57] *See* 15 U.S.C. 1681m(e); section 1088 of the Dodd-Frank Act.

[58] The Act also did not transfer rulemaking authority under the FCRA over any motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, subject to certain exceptions. *See* section 1029 of the Dodd-Frank Act.

[59] Those provisions include part of 12 CFR 334.1 and the definitions set out at 12 CFR 334.3(a), (b), (d), (i), and (k).

[60] 5 U.S.C. 601 *et seq.*

including State savings associations and their subsidiaries—are required to comply with part 334. Because all State savings associations and their subsidiaries have been required to comply with substantially the same rules beginning in 2004, today's Final Rule would have no significant economic impact on any State savings association.

In a similar way, portions of part 334 of the FDIC's rules were transferred to the CFPB Regulation V effective 2011. Because all FDIC supervised institutions—including State savings associations and their subsidiaries—have been required to comply with part 334 beginning in 2004, today's Final Rule would have no significant economic impact on those institutions.[61]

With regard to the portion of the Final Rule amending the Red Flags Rule and appendix:

1. *Statement of the need for, and objectives of, the proposed rule.* As noted above, the Clarification Act amended the definition of ''creditor'' in the FCRA for purposes of the red flags provisions. The FDIC is amending the definition of ''creditor'' in its Red Flags Rule to reflect the revised definition of that term in the Clarification Act. As also noted above, the FDIC is updating a cross-reference in the Red Flags Rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA.

2. *Small entities affected by the proposed rule.* The Final Rule would amend the definition of ''creditor'' in 12 CFR 334.90 to conform to the revised definition of that term in the Clarification Act. The definition continues to refer to the FCRA definition of ''creditor,'' which references the ECOA definition of ''creditor,'' but limits the application of the red flags provisions to only those creditors that regularly and in the ordinary course of business: (a) Obtain or use consumer reports in connection with a credit transaction; (b) furnish information to consumer reporting agencies in connection with a credit transaction; or (c) advance funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person. 12 U.S.C. 1681m(e)(4)(A). Creditors that advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person are excluded from the definition. Small entity creditors that do not meet this more limited definition would no longer be covered by the rule. However, small entities that are financial institutions would still be covered by the rule, regardless of whether they meet the revised definition of creditor.

The Final Rule also updates a cross-reference in the Red Flags Rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA. This revision would have no effect on small entities because there was no substantive difference between the FDIC definition of a ''notice of address discrepancy'' and the CFPB's definition.

3. *Recordkeeping, reporting, and compliance requirements.* The Final Rule does not impose any new recordkeeping, reporting, or compliance requirements on small entities. Small entities that no longer meet the narrower definition of ''creditor'' would not have to comply with the requirements of the Red Flags Rule. However, small entity financial institutions would still be required to comply with the Red Flags Rule, regardless of whether they meet the revised definition of creditor.

4. *Other federal rules.* The FDIC has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revision.

5. *Significant alternatives to the proposed revisions.* The revisions to the definition of ''creditor'' and the cross-reference to the definition of a ''notice of address discrepancy'' reflect statutory changes. The FDIC does not believe there are significant alternatives to these revisions. Although the FDIC has authority to determine through a rulemaking that any other creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft is subject to the Red Flags Rule, the FDIC does not believe it is appropriate to use its discretionary rulemaking authority at this time.

C. Plain Language

Section 722 of the GLB Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC received no comments on whether the Proposed Rule was clearly stated and effectively organized or on how the FDIC might make it easier to understand.

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA''), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[62] The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently in progress. The FDIC received no comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions.

List of Subjects

12 CFR Part 334

Fair credit reporting.

12 CFR Part 391

Fair credit reporting.

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 334 and 391 of title 12 of the Code of Federal Regulations as set forth below:

PART 334—FAIR CREDIT REPORTING

Subpart A—General Provisions

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 12 U.S.C. 1818, 1819 (Tenth), and 1831p–1; 15 U.S.C. 1681a, 1681b, 1681c, 1681m, 1681s, 1681s–2, 1681s–3, 1681t, 1681w, 6801 *et seq.,* Pub. L. 108–159, 117 Stat. 1952.

■ 2. Revise § 334.1 to read as follows:

§ 334.1 Purpose and scope.

(a) *Purpose* The purpose of this part is to implement the Fair Credit Reporting Act.

(b) *Scope* Except as otherwise provided in this part, the regulations in this part apply to insured state nonmember banks, state savings associations whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branches of foreign banks, and subsidiaries of such entities (except

[61] When propounding its new Regulation V, the CFPB made the following representation in its Regulatory Flexibility Act discussion:

[T]his rule has only a minor impact on entities subject to Regulation V. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no new, substantive obligations on covered entities and will require only minor, one-time adjustments to certain model form. . . .

76 FR at 79312.

[62] Public Law 104–208 (Sept. 30, 1996).

brokers, dealers, persons providing insurance, investment companies, and investment advisers).

■ 3. Amend § 334.3 by adding paragraph (m) to read as follows:

§ 334.3 Definitions.

* * * * *

(m) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

Subparts C through E—[Removed and Reserved]

■ 3. Remove and reserve subparts C, D, and E.

Subpart I—Records Disposal

■ 4. Revise the heading for subpart I to read as set forth above.

§ 334.82 [Removed and Reserved]

■ 5. Remove and reserve § 334.82.

Subpart J—Identity Theft Red Flags

■ 6. Amend § 334.90 by revising paragraphs (a) and (b)(5) and adding paragraph (b)(11) to read as follows:

§ 334.90 Duties regarding the detection, prevention, and mitigation of identity theft.

(a) *Scope* This section applies to a financial institution or creditor that is an insured state nonmember bank, State savings association whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

(b) * * *

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4).

* * * * *

(11) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

* * * * *

■ 7. Amend § 334.91 by revising paragraph (a) and adding paragraph (b)(3) to read as follows:

§ 334.91 Duties of card issuers regarding change of address.

(a) *Scope* This section applies to an issuer of a debit or credit card (card issuer) that is an insured state nonmember bank, state savings association whose deposits are insured by the Federal Deposit Insurance Corporation, insured state licensed branch of a foreign bank, or a subsidiary of such entities (except brokers, dealers, persons providing insurance, investment companies, or investment advisers).

(b) * * *

(3) *State savings association* has the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

* * * * *

■ 8. In appendix J to part 334, amend supplement A under the heading ''Alerts, Notifications or Warnings from a Consumer Reporting Agency'' by revising paragraph 3 to read as follows:

Appendix J to Part 334—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

* * * * *

Supplement A to Appendix J

* * * * *

Alerts, Notifications or Warnings from a Consumer Reporting Agency

* * * * *

■ 3. A consumer reporting agency provides a notice of address discrepancy, as defined in 12 CFR 1022.82(b).

* * * * *

PART 391—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 9. The authority citation for part 391 continues, in part, to read as follows:

Authority: 12 U.S.C. 1819.

* * * * *

Subpart C also issued under 12 U.S.C. 1462a; 1463; 1464; 1828; 1831p–1; and 1881–1884; 15 U.S.C. 1681m; 1681w.

* * * * *

Subpart C—[Removed and Reserved]

■ 10. Remove and reserve subpart C, consisting of §§ 391.20 through 391.23 and an appendix.

Dated at Washington, DC, this 22nd day of October, 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27291 Filed 10–27–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 330 and 370

RIN 3064–AE34

Temporary Liquidity Guarantee Program; Unlimited Deposit Insurance Coverage for Noninterest-Bearing Transaction Accounts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is rescinding and removing its regulations implementing the Temporary Liquidity Guarantee Program (TLGP) and the unlimited deposit insurance coverage for ''noninterest-bearing transaction accounts'' provided by section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and related definitions. Because these programs have expired by their terms, the regulations implementing them are unnecessary and obsolete.

DATES: *Effective Date:* The final rule is effective October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Schuyler Livingston, Economic Analyst, Division of Insurance and Research (202) 898–6830 or *slivingston@fdic.gov;* Marc Steckel, Deputy Director, Division of Resolutions and Receiverships (571) 858–8224 or *msteckel@fdic.gov;* Lisa D. Arquette, Associate Director, Division of Risk Management Supervision (202) 898–8633 or *larquette@fdic.gov;* or Gregory S. Feder, Counsel, Legal Division (202) 898–8724 or *gfeder@fdic.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In October 2008, acting in response to unprecedented disruptions to the nation's credit markets and pursuant to section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act),[1] the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (FRB) recommended that the Secretary of the Treasury, following consultation with the President, make a determination that systemic risk existed in the nation's financial system. After the Treasury Secretary's determination of systemic risk, the FDIC was authorized to take action or to provide assistance as necessary to avoid or to mitigate the effects of the perceived risks to the financial system. Pursuant to this

[1] 12 U.S.C. 1823(c)(4)(G).

authority, the FDIC issued part 370 of Title 12 of the Code of Federal Regulations (part 370) which established the TLGP. The TLGP was composed of two distinct components: The Debt Guarantee Program (DGP) and the Transaction Account Guarantee Program (TAGP). The DGP provided a temporary FDIC guarantee for all newly issued senior unsecured debt issued by participating entities up to prescribed limits; the TAGP provided a temporary FDIC guarantee for all funds held at FDIC-insured depository institutions in noninterest-bearing transaction accounts above the existing deposit insurance limit.

From its inception, the TLGP was intended to be a time-limited program. The FDIC's initial guarantee under the DGP expired on the earlier of the maturity date of the debt or June 30, 2012, for newly issued senior unsecured debt issued through June 30, 2009, by entities that opted into the DGP.[2] To reduce market disruption at the conclusion of the DGP and to facilitate the orderly phase-out of the program, in 2009, the FDIC extended the issuance period for senior unsecured debt through October 31, 2009, and similarly extended the FDIC's guarantee on such obligations to the earlier of the stated maturity date of the debt or December 31, 2012.[3] Later in 2009, the FDIC established a limited six-month emergency guarantee facility, available to participating entities on an application basis. Although no entities applied to avail themselves of the FDIC's emergency guarantee facility, the FDIC would have permitted approved entities to issue FDIC-guaranteed debt through April 30, 2010, for which the FDIC's guarantee would have expired on the earlier of the stated maturity date of the debt or December 31, 2012.[4]

Under the TAGP, the FDIC's guarantee of all noninterest-bearing transaction accounts originally was scheduled to expire on December 31, 2009.[5] In recognition of the continuing effects of economic turmoil, the FDIC twice extended the expiration deadline for the TAGP: First, until June 30, 2010,[6] and, later, until December 31, 2010, ''unless the Board, for good cause, extends the program for an additional period of time not to exceed one year.''[7] On September 30, 2010, the FDIC indicated that the TAGP would not be extended beyond December 31, 2010.[8]

Over the course of the DGP's existence, 122 entities issued TLGP debt. At its peak, the DGP guaranteed $345.8 billion of outstanding debt. The DGP guarantee on all TLGP debt that had not already matured expired on December 31, 2012. Therefore, at the end of 2012, no debt guaranteed by the FDIC under the DGP remained.

The FDIC collected $10.4 billion in fees and surcharges under the DGP. As of December 31, 2012, the FDIC had paid $153 million in losses resulting from six participating entities defaulting on debt issued under the DGP. The majority of these losses ($113 million) arose from banks with outstanding DGP notes that failed in 2011 and were placed into receivership.

The FDIC collected $1.2 billion in fees under the TAGP. Cumulative estimated TAGP losses on failures as of December 31, 2012, totaled $2.1 billion.

Overall, TLGP fees exceeded the losses from the program. From the inception of the TLGP, it was the FDIC's policy to recognize revenue to the Deposit Insurance Fund (DIF) for any portion of guarantee fees in excess of amounts needed to cover potential losses upon expiration of the TLGP guarantee period (December 31, 2012) or earlier. In total, $9.3 billion in TLGP fees were deposited into the DIF.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was enacted.[9] Section 343 of the Dodd-Frank Act provided for unlimited deposit insurance for noninterest-bearing transaction accounts for two years starting December 31, 2010, after which, by its terms, the section was repealed. This unlimited coverage for ''noninterest-bearing transaction accounts'' as defined in the Dodd-Frank Act was similar to, but not identical to, the protection provided for such account owners under the FDIC's TAGP. On November 15, 2010, the FDIC published a final rule in the **Federal Register** amending 12 CFR part 330 to implement section 343 of the Dodd-Frank Act, providing for unlimited deposit insurance for ''noninterest-bearing transaction accounts'' for two years starting December 31, 2010.[10] The final rule added a new definition of noninterest-bearing transaction account to the FDIC's regulations at § 330.1(r) (now § 330.1(s)). The final rule also added new § 330.16 to provide for full insurance coverage, regardless of the standard maximum deposit insurance limit, to noninterest-bearing transaction accounts from December 31, 2010, through December 31, 2012.

On January 27, 2011, the FDIC published a final rule in the **Federal Register** (1) amending the definition of ''noninterest-bearing transaction account'' to include IOLTA accounts; (2) requiring that notice be posted regarding the scope of coverage of the Dodd-Frank Act transaction account guarantee program at the bank's main office, in branch lobbies, and on its Web site; and (3) requiring that notice be provided to holders of NOW accounts that such accounts are no longer covered.[11]

The expiration dates for the DGP and the TAGP were stated clearly in the FDIC's TLGP regulation. Because December 31, 2010 (the expiration date of the TAGP) and December 31, 2012 (the expiration of the DGP) have passed, all of the FDIC's obligations under either component of the TLGP have expired. With the expiration of both the DGP and the TAGP, part 370 is unnecessary and obsolete.

Similarly, § 330.16(a) clearly provides that the unlimited deposit insurance for noninterest-bearing transaction accounts under the Dodd-Frank Act expired on December 31, 2012. After that date, by its terms, the section was repealed. As such, § 330.16 and the definition of ''noninterest-bearing transaction account'' at § 330.1(s) are unnecessary and obsolete.

II. The Final Rule

For the reasons set forth in the preceding section, the FDIC is issuing the final rule, which will rescind part 370, § 330.16, and § 330.1(s) and remove them from the FDIC's regulations.

III. Regulatory Analysis

A. Administrative Procedure Act

1. Notice and Opportunity for Public Comment

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), providing notice and an opportunity for public comment is not required prior to the issuance of a substantive rule if an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. In this instance,

[2] 73 FR 72244 (Nov. 26, 2008).

[3] 74 FR 26521 (Jun. 3, 2009).

[4] 74 FR 54743 (Oct. 23, 2009).

[5] 73 FR 72244 (Nov. 26, 2008).

[6] 74 FR 45093 (Sept. 1, 2009).

[7] 75 FR 36506 (Jun. 28, 2010).

[8] 75 FR 60341 (Sept. 30, 2010).

[9] Public Law 111–203 (July 21, 2010).

[10] 75 FR 69577 (Nov. 15, 2010) (adding 12 CFR 303.1(r), 303.16). The FDIC used its proposed rule implementing the Dodd-Frank coverage for noninterest-bearing transaction accounts as a vehicle for the FDIC's Board of Directors to announce that it would not continue the TAGP beyond December 31, 2010. 75 FR 60341(Sept. 30, 2010).

[11] 76 FR 4813 (Jan. 27, 2011) (amending 12 CFR 303.1(r), 303.16).

the FDIC invokes this good cause exception to Section 553 of the APA.

The FDIC believes that good cause exists for issuing a final rule without providing notice and an opportunity for public comment because such an exercise is ''unnecessary.'' By the express terms of both regulations, the underlying programs described in part 370 and § 330.16 have expired, and, because of that, the rescission of these rules can have no effect on the banking industry or the public. Moreover, the rescission of part 370, § 330.1(s), and § 330.16 is not ''substantive'' as the programs that these regulations implemented have expired and they affect no substantive rights or obligations.

2. Effective Date

In addition, section 553(d)(3) of the APA provides that an agency, for good cause found and published with the rule, does not have to comply with the requirement that a substantive rule be published not less than 30 days before its effective date. The FDIC invokes this good cause exception because the rescission of part 370, § 330.1(s), and § 330.16 is not ''substantive'' as the programs that these regulations implemented have expired and they affect no substantive rights or obligations.[12]

B. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[13] the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions. The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and has commenced the next decennial review. Rescission of part 370 and § 330.16 is consistent with the required regulatory response to the EGRPRA review process: To eliminate unnecessary regulations to the extent such action is appropriate.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Final Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).[14] As required by law, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Final Rule may be reviewed.

D. Paperwork Reduction Act

Existing collections of information shall be discontinued or modified, as appropriate, to the extent that this rule obviates or alters any collection of information.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act[15] (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b), or any other law.[16] As discussed above, consistent with section 553(b)(3)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be unnecessary. Therefore, pursuant to 5 U.S.C. 601(2), the RFA does not apply.

List of Subjects

12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth in the preamble above, under the authority of 12 U.S.C. 1821, the Board of Directors of the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(*l*), 1813(m), 1817(i), 1818(q), 1819(a)(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

§ 330.1 [Amended]

■ 2. Remove and reserve § 330.1(s).

§ 330.16 [Removed and Reserved]

■ 3. Remove and reserve § 330.16.

PART 370—[Removed and Reserved]

■ 4. Remove and reserve part 370.

Dated at Washington, DC, this 22nd day of October 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27294 Filed 10–27–15; 8:45 am]

BILLING CODE 6714–01–P

[12] 5 U.S.C. 553(d)(3).

[13] 12 U.S.C. 3311.

[14] Public Law 104–121 (Mar. 29, 1996), as amended by Public Law 110–28 (May 25, 2007).

[15] Public Law 96–354 (Sept. 19, 1980).

[16] 5 U.S.C. 601(2).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4205; Directorate Identifier 2015–NM–149–AD; Amendment 39–18301; AD 2015–21–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive eddy current inspections for any cracking in the inspar upper skin, and related investigative and corrective actions if necessary. This AD was prompted by a report that an operator discovered a crack in a certain section of the inspar upper skin, just forward of the rear spar on the right wing. We are issuing this AD to detect and correct any cracking in the inspar upper skin and rear spar upper chord, which could result in the inability of the structure to carry limit load, or result in a fuel leak, which could prevent continued safe flight and landing.

DATES: This AD is effective November 12, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 12, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 9, 2014 (79 FR 12368, March 5, 2014). We must receive comments on this AD by December 14, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4205.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4205; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report that an operator discovered a crack in the inspar upper skin at wing buttock line 157, just forward of the rear spar on the right wing. The crack measured 2.375 inches long. Two additional cracks were found in the skin at two holes common to the rear spar in the same area. Subsequent inspections specified in Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, revealed that the rear spar upper chord was almost completely severed. Web cracks were also discovered on both wings. This condition, if not corrected, could result in the inability of the structure to carry limit load, or result in a fuel leak, which could prevent continued safe flight and landing. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015. The service information describes procedures for repetitive eddy current inspections for any cracking in the inspar upper skin, and applicable related investigative and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Other Relevant Rulemaking

AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014), was issued for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. AD 2014–12–13 requires repetitive inspections for cracking of the aft support fitting for the main landing gear beam, and the rear spar upper chord and rear spar web in the area of rear spar station 224.14; and repair if necessary. AD 2014–12–13 refers to Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, as the appropriate source of service information for accomplishing the required actions.

For those airplanes that have not yet done the high frequency eddy current open-hole inspection specified in Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, this AD specifies using Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, to do the eddy current inspections for any cracking in the inspar upper skin area near the rear spar at wing buttock line 157. The eddy current inspections specified in Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, are intended to ensure there are no undetected cracks in the inspar upper skin area near the rear spar at wing buttock 157 prior to the accomplishment of the inspections specified in Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Information.''

''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this AD. ''Corrective actions'' correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the AD and the Service Information

Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

• In accordance with a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

The effectivity of Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, includes Group 1, configuration 1, airplanes. Those airplanes have been inspected using a high frequency eddy current open-hole inspection, in accordance with Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013. We have determined that only those airplanes that have not done the high frequency eddy current open-hole inspection, in accordance with Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, are affected by the identified unsafe condition addressed in this AD. Therefore, we have excluded Group 1, configuration 1, airplanes from the applicability of this AD.

Explanation of "RC" Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as Required for Compliance (RC) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as RC, the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an AMOC is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracking in the inspar upper skin and rear spar upper chord could result in the inability of the structure to carry limit load, or result in a fuel leak, which could prevent continued safe flight and landing. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2015–4205 and Directorate Identifier 2015–NM–149–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 495 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle ..	$42,075 per inspection cycle.

We estimate the following costs to do any necessary repairs that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
One-time inspection	86 work-hours × $85 per hour = $7,310	$0	$7,310
Repair	3,700 work-hours × $85 per hour = $314,500	0	314,500

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–21–08 The Boeing Company: Amendment 39–18301; Docket No. FAA–2015–4205; Directorate Identifier 2015–NM–149–AD.

(a) Effective Date

This AD is effective November 12, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015; except for Group 1, configuration 1, airplanes identified in Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report that an operator discovered a crack in the inspar upper skin at wing buttock line 157, just forward of the rear spar on the right wing. We are issuing this AD to detect and correct any cracking in the inspar upper skin and rear spar upper chord, which could result in the inability of the structure to carry limit load, or result in a fuel leak, which could prevent continued safe flight and landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Actions

Except as provided by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015: Do an eddy current inspection for any cracking in the inspar upper skin, and repair doublers and repair triplers, as applicable, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015; except as provided by paragraph (h) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015.

(h) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The ''Condition'' column of table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, refers to total flight cycles ''as of the original issue date of this service bulletin.'' However, for this condition, this AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(3) Although Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, specifies to contact Boeing for certain repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Terminating Actions for Certain Airplanes

For Group 1, configurations 5 through 7, airplanes specified in Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015, accomplishment of any applicable high frequency eddy current inspection, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013 (which was incorporated by reference in AD 2014–03–06, Amendment 39–17743 (79 FR 12368, March 5, 2014), and continues to be incorporated by reference in AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014)), terminates the repetitive inspections in paragraph (g) of this AD for those airplanes, provided if any cracking is found, repair is done before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Note 1 to paragraph (i) of this AD: AD 2014–12–13, Amendment 39–17874 (79 FR 39300, July 10, 2014), refers to Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, as the appropriate source of service information for accomplishing the actions required in that AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with this AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *jennifer.tsakoumakis@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on November 12, 2015.

(i) Boeing Alert Service Bulletin 737–57A1326, dated September 22, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on April 9, 2014 (79 FR 12368, March 5, 2014).

(i) Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013.

(ii) Reserved.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 11, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–26993 Filed 10–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0593; Directorate Identifier 2015–NE–08–AD; Amendment 39–18254; AD 2015–17–21]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines. This AD requires reducing the cyclic life limits for certain high-pressure turbine (HPT) disks, removing those disks that have exceeded the new life limit, and replacing them with serviceable parts. This AD was prompted by RR updating the life limits for certain HPT disks. We are issuing this AD to prevent failure of the HPT disk, which could result in uncontained disk release, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective December 2, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 2, 2015.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0593.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0593; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on April 29, 2015 (80 FR 23737). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An engineering analysis, carried out by RR, of the lives of critical parts of the RB211–535E4–37 engine, has resulted in reduced cyclic life limits for certain high pressure (HP) turbine discs. The reduced limits are published in the RR RB211–535E4–37 Time Limits Manual (TLM): 05–10–01–800–000, current Revision dated July 2014.
>
> Operation of critical parts beyond these reduced cyclic life limits may result in part failure, possibly resulting in the release of high-energy debris, which may cause damage to the aeroplane and/or injury to the occupants.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 23737, April 29, 2015).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 1 CFR Part 51

We reviewed Task 05–00–01–800–000, ''Recording and Control of the Lives of Parts'', dated July 1, 2015, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015; and Task 05–10–01–800–000, ''Group A Parts Lives—CONFIG–1'', dated July 1, 2014, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015. This service information provides revised life limits for the affected HPT disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or see **ADDRESSES** for other ways to access this service information.

Related Service Information

We reviewed RR Non-Modification Service Bulletin (NMSB) No. RB.211–72–G188, Revision No. 1, dated October 30, 2013. The NMSB describes the updated lifing analysis of the affected HPT disks.

Costs of Compliance

We estimate that this AD affects 650 engines installed on airplanes of U.S. registry. We also estimate that it would take about 0 hours per engine to comply with this AD. The average labor rate is $85 per hour. The pro-rated cost of required parts would be about $12,213 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $7,938,450.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2015–17–21 Rolls-Royce plc: Amendment 39–18254; Docket No. FAA–2015–0593; Directorate Identifier 2015–NE–08–AD.

(a) Effective Date

This AD becomes effective December 2, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Rolls-Royce plc (RR), RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–C–37 turbofan engines.

(d) Reason

This AD was prompted by RR updating the life limits for certain high-pressure turbine (HPT) disks. We are issuing this AD to prevent failure of the HPT disk, which could result in uncontained disk release, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) After the effective date of this AD, use Task 05–00–01–800–000, ''Recording and Control of the Lives of Parts'', dated July 1, 2015, of the Rolls-Royce (RR) RB211–535E4–37/23 Time Limits Manual (TLM), publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015 to determine the new life limits for the affected engine models and configurations, with the exception of those engine models mentioned in paragraph (e)(2) of this AD.

(2) For RR RB211–535E4–B–37 or RB211–535E4–C–37 engines with an affected HPT disk that was previously installed on an RB211–535E4–37 engine operated under Flight Plan A, use Task 05–10–01–800–000, ''Group A Parts Lives—CONFIG–1'', dated July 1, 2014, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015 to re-calculate equivalent cycles since new to obtain the new life limit.

(3) If an affected engine model has an HPT disk installed with part number (P/N) UL27681 or UL39767, remove the affected HPT disk before the accumulated cyclic life exceeds either 19,500 flight cycles (FCs) under Flight Plan A, or 14,700 FCs under Flight Plan B, or within 25 FCs after the effective date of this AD, whichever occurs later.

(4) For all affected engines, other than those specified in paragraph (e)(3) of this AD, remove each HPT disk before exceeding its applicable life limit as specified in Task 05–00–01–800–000, ''Recording and Control of the Lives of Parts'', dated July 1, 2015, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015; and Task 05–10–01–800–000, ''Group A Parts Lives—CONFIG–1'', dated July 1, 2014, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015.

(5) Install an HPT disk eligible for installation.

(f) Definition

For the purpose of this AD, a part eligible for installation is one with a P/N listed in Task 05–00–01–800–000, ''Recording and Control of the Lives of Parts'', dated July 1, 2015, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015; and Task 05–10–01–800–000, ''Group A Parts Lives—CONFIG–1'', dated July 1, 2014, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015 with a total accumulated cyclic life that is less than the applicable life limit specified in those Tasks.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2014–0249R1, dated February 18, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–0593.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Task 05–00–01–800–000, ''Recording and Control of the Lives of Parts'', dated July 1, 2015, of the Rolls-Royce (RR) RB211–535E4–37/23 Time Limits Manual (TLM), publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015.

(ii) Task 05–10–01–800–000, ''Group A Parts Lives—CONFIG–1'', dated July 1, 2014, of the RR RB211–535E4–37/23 TLM, publication reference T–211(535)–6RR, Revision 49, dated July 1, 2015.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE24 8BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Internet: *https://www.aeromanager.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on August 21, 2015.

Colleen M. D'Alessandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–21729 Filed 10–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4207; Directorate Identifier 2015–NM–123–AD; Amendment 39–18304; AD 2015–21–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2015–16–01 for certain The Boeing Company Model airplanes. AD 2015–16–01 required incorporating design changes to improve the reliability of the cabin altitude warning system by installing a redundant cabin altitude pressure switch, replacing the aural warning module (AWM) with a new or reworked AWM, and changing certain wire bundles or connecting certain previously capped and stowed wires as necessary. For certain airplanes, AD 2015–16–01 also required prior or concurrent incorporation of related design changes by modifying the instrument panels, installing light assemblies, modifying the wire bundles, and installing a new circuit breaker, as necessary. This AD retains all actions required by AD 2015–16–01. This AD was prompted by the discovery of a typographical error in AD 2015–16–01 that referred to a nonexistent paragraph. We are issuing this AD to prevent the loss of cabin altitude warning, which could delay flightcrew recognition of a lack of cabin pressurization, and could result in incapacitation of the flightcrew due to hypoxia (a lack of oxygen in the body), and consequent loss of control of the airplane.

DATES: This AD is effective November 12, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 15, 2015 (80 FR 48013, August 11, 2015).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 7, 2012 (77 FR 60296, October 3, 2012).

We must receive any comments on this AD by December 14, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4207; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 22, 2015, we issued AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), for certain The Boeing Company Model 737 airplanes. AD 2015–16–01 required incorporating design changes to improve the reliability of the cabin altitude warning system by installing a redundant cabin altitude pressure switch, replacing the AWM with a new or reworked AWM, and changing certain wire bundles or connecting certain previously capped and stowed wires as necessary. For certain airplanes, AD 2015–16–01 also required prior or concurrent incorporation of related design changes by modifying the instrument panels, installing light assemblies, modifying the wire bundles, and installing a new circuit breaker, as necessary. AD 2015–16–01 resulted from the report of a flightcrew not receiving an aural warning during a lack of cabin pressurization event. We issued AD 2015–16–01 to prevent the loss of cabin altitude warning, which could delay flightcrew recognition of a lack of cabin pressurization, and could result in incapacitation of the flightcrew due to hypoxia (a lack of oxygen in the body), and consequent loss of control of the airplane.

Actions Since AD 2015–16–01 Was Issued

Since we issued AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), we have discovered a typographical error in paragraph (j)(1)(iii) of AD 2015–16–01. That error referred to paragraph (j)(4), which is a paragraph that does not exist in AD 2015–16–01. The correct reference is paragraph (j)(1)(iv) of AD 2015–16–01. We have changed paragraph (j)(1)(iii) of this AD accordingly.

We have also revised paragraph (g)(2) of this AD to remove a limitation to use only Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014, after the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Boeing Alert Service Bulletin 737–31A1325, Revision 2, dated June 5, 2014.
- Boeing Alert Service Bulletin 737–31A1332, Revision 4, dated October 31, 2013.

• Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013.

• Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014.

The service information describes procedures for incorporating design changes to improve the reliability of the cabin altitude warning system by installing a redundant cabin altitude pressure switch, replacing the AWM with a new or reworked AWM, and changing certain wire bundles or connecting certain previously capped and stowed wires as necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires the same actions as those required in AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015).

FAA's Justification and Determination of the Effective Date

We are superseding AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), to correct a typographical error in paragraph (j)(1)(iii) of AD 2015–16–01, which inadvertently referenced a non-existent paragraph, and to revise paragraph (g)(2) of this AD to remove a limitation to use only Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014, after the effective date of AD 2015–16–01. We have made no other changes to the requirements published in AD 2015–16–01. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2015–4207 and Directorate Identifier 2015–NM–123–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 1,618 airplanes of U.S. registry. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install a redundant cabin altitude pressure switch, replace the AWM with a new or reworked AWM, change certain wire bundles or connect certain capped and stowed wires [retained actions from AD 2015–16–01, Amendment 39-18226 (80 FR 48013, August 11, 2015), for 1,618 airplanes].	Up to 62 work-hours × $85 per hour = up to $5,270.	$33,576	Up to $38,846	Up to $62,852,828.
Modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker (concurrent requirements) [retained actions from AD 2015–16–01, Amendment 39-18226 (80 FR 48013, August 11, 2015), for 1,596 airplanes].	Up to 92 work-hours × $85 per hour = up to $7,820.	5,292	Up to $13,112	Up to $20,926,752.
Modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker (concurrent requirements) [retained actions from AD 2015–16–01, Amendment 39-18226 (80 FR 48013, August 11, 2015), for 22 airplanes].	Up to 92 work-hours × $85 per hour = up to $7,820.	5,292	Up to $13,112	Up to $288,464.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition

that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015) and adding the following new AD:

2015–21–11 The Boeing Company: Amendment 39–18304; Docket No. FAA–2015–4207; Directorate Identifier 2015–NM–123–AD.

(a) Effective Date

This AD is effective November 12, 2015.

(b) Affected ADs

This AD replaces AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 737–100, –200, –200C, –300,–400, and –500 series airplanes, as identified in Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013.

(2) Model 737–600, –700, –700C, –800,–900, and –900ER series airplanes, as identified in Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air Conditioning.

(e) Unsafe Condition

This AD was prompted by the report of a flightcrew not receiving an aural warning during a lack of cabin pressurization event. We are issuing this AD to prevent the loss of cabin altitude warning, which could delay flightcrew recognition of a lack of cabin pressurization, and could result in incapacitation of the flightcrew due to hypoxia (a lack of oxygen in the body), and consequent loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Installation, With Removal of Limitation To Use Certain Service Information

This paragraph restates the actions required by paragraph (g) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), with removal of the limitation to use certain service information from paragraph (g)(2) of this AD. Within 72 months after November 7, 2012 (the effective date of AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012)), install a redundant cabin altitude pressure switch, replace the aural warning module (AWM) with a new or reworked AWM, and change certain wire bundles or connect certain capped and stowed wires, as applicable, in accordance with the Accomplishment Instructions of the applicable service information in paragraphs (g)(1) and (g)(2) of this AD; except as provided by paragraph (k)(1) of this AD.

(1) Boeing Special Attention Service Bulletin 737–21–1164, Revision 1, dated May 17, 2012; or Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). As of September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), use Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013, for the actions specified in paragraph (g) of this AD.

(2) Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010, as revised by Boeing Special Attention Service Bulletin 737–21–1165, Revision 2, dated April 30, 2012; or Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes).

(h) Retained Concurrent Actions, With No Changes

This paragraph restates the concurrent actions required by paragraph (h) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), with no changes. For airplanes identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes); and Boeing Alert Service Bulletin 737–31A1332, Revision 3, dated March 28, 2012 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes); except as provided by paragraph (i) of this AD: Before or concurrently with accomplishment of the actions specified in paragraph (g) of this AD, as applicable, modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker, in accordance with the Accomplishment Instructions of the applicable service information in paragraphs (h)(1) and (h)(2) of this AD; except as provided by paragraph (k)(2) of this AD.

(1) The service information for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes as identified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(iii), of this AD. As of September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), use Boeing Alert Service Bulletin 737–31A1325, Revision 2, dated June 5, 2014 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes), for the actions specified in paragraph (h) of this AD.

(i) Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

(ii) Boeing Alert Service Bulletin 737–31A1325, Revision 1, dated July 5, 2012.

(iii) Boeing Alert Service Bulletin 737–31A1325, Revision 2, dated June 5, 2014.

(2) Boeing Alert Service Bulletin 737–31A1332, Revision 3, dated March 28, 2012; or Boeing Alert Service Bulletin 737–31A1332, Revision 4, dated October 31, 2013 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes). As of September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), use Boeing Alert Service Bulletin 737–31A1332, Revision 4, dated October 31, 2013 (for Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes), for the actions specified in paragraph (h) of this AD.

(i) Retained Additional Concurrent Requirement, With No Changes

This paragraph restates the concurrent actions required by paragraph (i) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), with no changes. For airplanes having variable numbers YA001 through YA008 inclusive, YA251, YA501 through YA508 inclusive, and YC321 through YC325 inclusive: Before or concurrently with accomplishment of the actions specified in paragraph (g) of this AD, or within 18 months after September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August

11, 2015)), whichever occurs later, modify the instrument panels, install light assemblies, modify the wire bundles, and install a new circuit breaker, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1332, Revision 4, dated October 31, 2013.

(j) Retained Credit for Previous Actions, With Corrected Paragraph Reference

(1) This paragraph restates the credit for previous actions stated in paragraph (i) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), with corrected paragraph reference.

(i) This paragraph provides credit for the actions required by paragraph (g) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), if those actions were performed before November 7, 2012 (the effective date of AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012)), using Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010, which was incorporated by reference in AD 2012–19–11.

(ii) For airplanes identified in Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010; except airplanes having variable numbers YA001 through YA019 inclusive, YA201 through YA203 inclusive, YA231 through YA242 inclusive, YA251, YA252, YA271, YA272, YA301, YA302, YA311, YA312, YA501 through YA508 inclusive, YA541, YA701, YA702, YC001 through YC007 inclusive, YC051, YC052, YC101, YC102, YC111, YC121, YC301, YC302, YC321 through YC330 inclusive, YC381, YC401 through YC403 inclusive, YC501, YC502, and YE001 through YE003 inclusive: This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), using Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010, which was incorporated by reference in AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012).

(iii) For airplanes identified in Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011; except airplanes identified in paragraph (j)(1)(iv) of this AD and airplanes having variable numbers YA001 through YA019 inclusive, YA201 through YA203 inclusive, YA231through YA242 inclusive, YA251, YA252, YA271, YA272, YA301, YA302, YA311, YA312, YA501 through YA508 inclusive, YA541, YA701, YA702, YC001 through YC007 inclusive, YC051, YC052, YC101, YC102, YC111, YC121, YC301, YC302, YC321 through YC330 inclusive, YC381, YC401 through YC403 inclusive, YC501, YC502, and YE001 through YE003 inclusive: This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), using Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011, which was incorporated by reference in AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012).

(iv) For Group 21, Configuration 2 airplanes identified in Boeing Alert Service Bulletin 737–31A1332, Revision 3, dated March 28, 2012: This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), using Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011, which was incorporated by reference in AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012); and provided that the actions specified in Boeing Service Bulletin 737–21–1171, dated February 12, 2009 (which is not incorporated by reference in this AD), were accomplished prior to or concurrently with the actions specified in Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011.

(2) This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before September 15, 2015 (the effective date of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015)), using the service information identified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010, which was incorporated by reference in AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012).

(ii) Boeing Alert Service Bulletin 737–31A1325, Revision 1, dated July 5, 2012, which is not incorporated by reference in this AD.

(k) Retained Exceptions to the Service Information, With No Changes

This paragraph restates the actions required by paragraph (k) of AD 2015–16–01, Amendment 39–18226 (80 FR 48013, August 11, 2015), with no changes.

(1) Where Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013, specifies to contact Boeing for instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Alert Service Bulletin 737–31A1325, Revision 2, dated June 5, 2014, specifies to contact Boeing for instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2012–19–11, Amendment 39–17206 (77 FR 60296, October 3, 2012), are approved as AMOCs for the corresponding provisions of this AD.

(m) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *Francis.Smith@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(5) and (n)(6) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 15, 2015 (80 FR 48013, August 11, 2015).

(i) Boeing Alert Service Bulletin 737–31A1325, Revision 2, dated June 5, 2014.

(ii) Boeing Alert Service Bulletin 737–31A1332, Revision 4, dated October 31, 2013.

(iii) Boeing Special Attention Service Bulletin 737–21–1164, Revision 2, dated August 23, 2013.

(iv) Boeing Special Attention Service Bulletin 737–21–1165, Revision 3, dated July 16, 2014.

(4) The following service information was approved for IBR on November 7, 2012 (77 FR 60296, October 3, 2012).

(i) Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

(ii) Boeing Alert Service Bulletin 737–31A1332, Revision 1, dated June 24, 2010.

(iii) Boeing Alert Service Bulletin 737–31A1332, Revision 2, dated August 18, 2011.

(iv) Boeing Alert Service Bulletin 737–31A1332, Revision 3, dated March 28, 2012.

(v) Boeing Special Attention Service Bulletin 737–21–1164, Revision 1, dated May 17, 2012.

(vi) Boeing Special Attention Service Bulletin 737–21–1165, Revision 1, dated July 16, 2010.

(vii) Boeing Special Attention Service Bulletin 737–21–1165, Revision 2, dated April 30, 2012.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 16, 2015.

Jeffrey E. Duven,

Manager,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27190 Filed 10–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 150825776–5776–01]

RIN 0694–AG69

Amendments to Existing Validated End-User Authorizations in the People's Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing authorizations for Validated End Users Advanced Micro-Fabrication Equipment, Inc., China (AMEC) and Applied Materials (China), Inc. (AMC) in the People's Republic of China (PRC). Specifically, BIS amends Supplement No. 7 to Part 748 of the EAR to add one item to AMEC's list of eligible items that may be exported, reexported or transferred (in country) to the company's eligible facility in the PRC, and to add a facility and an item to Validated End User AMC's list of eligible destinations and eligible items.

DATES: This rule is effective October 28, 2015.

FOR FURTHER INFORMATION CONTACT: End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: 202–482–5991; Fax: 202–482–3911; Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the EAR. Under the terms described in that supplement, VEUs may obtain eligible items without an export license from BIS, in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs and may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646), to create Authorization VEU.

Amendments to Existing VEU Authorization for Advanced Micro-Fabrication Equipment Inc. China (AMEC) and Applied Materials (China) Inc. (AMC) in the People's Republic of China

Revision to the List of ''Eligible Items (by ECCN)'' for AMEC

In this final rule, BIS amends Supplement No. 7 to Part 748 to add one Export Control Classification Number (ECCN), 3B001.a.2, to the list of items that may be exported, reexported or transferred (in country) to AMEC's facility in the PRC under Authorization VEU. This amendment is made in response to a request from AMEC and upon the ERC's determination that adding the additional ECCN is authorized under Section 748.15 of the EAR. The revised list of eligible items for AMEC is as follows:

Eligible Items (by ECCN) That May Be Exported, Reexported or Transferred (In Country) to the Eligible Destination Identified Under AMEC's Validated End-User Authorization

2B230, 3B001.a.2, 3B001.c and 3B001.e (items classified under ECCNs 3B001.a.2, 3B001.c, and 3B001.e are limited to components and accessories).

Revision to the List of ''Eligible Items (by ECCN)'' and List of ''Eligible Destinations'' for AMC

In this rule, BIS also amends Supplement No. 7 to Part 748 to add an eligible facility, Applied Materials (China), Inc.—Headquarters, to AMC's authorized list of ''Eligible Destinations.'' Further, BIS authorizes one ECCN, 3E001 (limited to ''technology'' according to the General Technology Note for the ''development,'' or ''production'' of items controlled by ECCN 3B001), for the list of items which may be exported, reexported or transferred (in country) to that facility in the PRC under AMC's Authorization VEU. These amendments are made in response to a request from AMC and upon the ERC's determination that adding the additional facility and additional ECCN is authorized under Section 748.15 of the EAR. The new eligible facility and related eligible items, identified by three asterisks in Supplement No. 7 to Part 748, for AMC are as follows:

New Eligible Destination, Applied Materials (China), Inc.—Headquarters, 1388 Zhangdong Road, Bldg. 22, Zhangiang Hi-Tech Park, Pudong, Shanghai, 201203, China

Eligible Item (by ECCN) That May Be Exported, Reexported or Transferred (In Country) to the Applied Materials (China), Inc.—Headquarters Eligible Destination Identified Under AMCs Validated End-User Authorization, 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by ECCN 3B001)

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to

carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule. Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS adds eligible destinations and items to two existing eligible VEUs. These changes have been made within the established regulatory framework of the VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. However, BIS finds good cause to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending the authorization of two existing VEUs by adding an ECCN and a facility for one and an ECCN for the other to the list of eligible items that may be sent to them, consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness would likely cause confusion regarding which items are authorized by the U.S. Government and in turn stifle the purpose of the VEU Program. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 2. Amend Supplement No. 7 to part 748, under ''China (People's Republic of),'' by revising the entries for ''Advanced Micro-Fabrication Equipment, Inc., China'' and ''Applied Materials (China), Inc.'' to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
*	*	* *	*	* *
	Advanced Micro-Fabrication Equipment, Inc., China.	2B230, 3B001.a.2, 3B001.c and 3B001.e (items classified under ECCNs 3B001.a.2, 3B001.c and 3B001.e are limited to components and accessories).	Advanced Micro-Fabrication Equipment, Inc., 188 Taihua Road, Jinqiao Export Processing Zone (South Area), Pudong, Shanghai 201201, China.	78 FR 41291, 7/10/13. 80 FR [INSERT PAGE NUMBER], 10/28/15.
	Applied Materials (China), Inc.	*These Items Authorized for those Applied Materials Destinations Identified by one asterisk (*):*, 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001).	* Applied Materials South East Asia Pte. Ltd.—Shanghai Depot, c/o Shanghai Applied Materials Technical Service Center, No. 2667 Zuchongzhi Road, Shanghai, China 201203. * Applied Materials South East Asia Pte. Ltd.—Beijing Depot, c/o Beijing Applied Materials Technical Service Center, No. 1 North Di Sheng Street, BDA, Beijing, China 100176. * Applied Materials South East Asia Pte. Ltd.—Wuxi Depot, c/o Sinotrans Jiangsu Fuchang Logistics Co., Ltd., 1 Xi Qin Road, Wuxi Export Processing Zone, Wuxi, Jiangsu, China 214028. * Applied Materials South East Asia Pte. Ltd.—Wuhan Depot, c/o Wuhan Optics Valley Import & Export Co., Ltd., No. 101 Guanggu Road, East Lake High-Tec Development Zone, Wuhan, Hubei, China 430074. * Applied Materials (China), Inc.—Shanghai Depot, No. 2667, Zuchongzhi Road, Shanghai, China 201203. * Applied Materials (China), Inc.—Beijing Depot, No. 1 North Di Sheng Street, BDA, Beijing, China 100176.	72 FR 59164, 10/19/07. 74 FR 19382, 4/29/09. 75 FR 27185, 5/14/10. 77 FR 10953, 2/24/12. 80 FR, [INSERT PAGE NUMBER], 10/28/15.
		These Items Authorized for the Applied Materials Destination Identified by two asterisks (**): 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to ''software'' specially designed for the ''use'' of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by ECCN 3B001).	** Applied Materials (Xi'an) Ltd., No. 28 Xin Xi Ave., Xi'an High Tech Park, Export Processing Zone, Xi'an, Shaanxi, China 710075.	

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
		This item is authorized for those Applied Materials Destination Identified by three asterisks (***): 3E001 (limited to ''technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by ECCN 3B001).	*** Applied Materials (China), Inc.—Headquarters, 1388 Zhangdong Road, Bldg. 22, Zhangjiang Hi-Tech Park, Pudong, Shanghai, 201203, China.	
*	*	*	*	*

Dated: October 21, 2015.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2015–27442 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 197

[Docket ID: DoD–2013–OS–0108]

RIN 0790–AJ07

Historical Research in the Files of the Office of the Secretary of Defense (OSD)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

DATES: This rule is effective November 27, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald R. McCully, 571–372–0473.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

a. The Office of the Secretary of Defense (OSD) is issuing a final rule that would update Part 197.5 of Title 32, Code of Federal Regulations. This final rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

b. In accordance with Title 5 of the United States Code, ''Government Organization and Employees,'' this rule updates procedures for the programs that permit authorized personnel to perform historical research in records created by or in the custody of Office of the Secretary of Defense and its components consistent with federal regulations.

B. Summary of the Major Provisions of the Regulatory Action In Question

This final rule updates and clarifies procedures regarding the review and accessibility to records and information in the custody of the Secretary of Defense and the OSD Components. The purpose of this rule is to provide such guidance to former Cabinet level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers.

1. *Explanation of FOIA Exemptions and Classification Categories*: Explanation of restrictions applicable to the public's request for information within OSD files.

2. *Responsibilities*: Outlines the responsibilities of Director of Administration and Management (D&AM); OSD Records Administrator, and the OSD Components.

3. *Procedures for Historical Researchers Permanently Assigned Within the Executive Branch Working on Official Projects*: Updates and outlines procedures for access to information held within OSD files for historical research.

4. *Procedures for the Department of State (DoS) Foreign Relations of the United States (FRUS) Series*: Updates and outlines for official researchers of the DOS to access information within OSD Files.

5. *Procedures for Historical Researchers Not Permanently Assigned to the Executive Branch*: Updates and outlines procedures for Non DoD and executive branch personnel to access information within OSD files for historical research.

6. *Procedures for Document Review for the FRUS Series*: Updates and outlines procedures for reviewing FRUS information within OSD files for historical research.

7. *Procedures for Copying Documents*: Updates and outlines procedures for copying information within OSD files for historical research.

8. *General Guidelines for Researching OSD Records*: Updates and outlines procedures for researching information within OSD files for historical research.

9. *General Guidelines for Researching OSD Records*: Updates and outlines guidelines applicable to researchers while reviewing OSD files.

C. Costs and Benefits

Annual yearly cost vary and are dependent on the number of researchers requesting access to DoD owned information, the volume of information requiring review and/or declassification and other operational constraints within a given FY.

Cost: Cost estimates use actual data for 2012 per hour. Cost is aggregated based on average rank (military), grade (civilian) and time in service for personnel qualified for oversight of researchers within the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA area.

Military = Rank 05 with 10+ years of time in service

Civilian = Grade GS–13, Step 5+ with minimum 5 years of time in service

Military = $39.77 per hour

Civilian = $48.51 per hour

Benefit: This allows the government to assert positive control over access to classified and unclassified information requested for research purposes. DoD information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DoD shall be reviewed for clearance prior to release.

II. Public Comments

On Thursday, May 8, 2014 (79 FR 26381–26391), the Department of Defense published a proposed rule requesting public comment. At the end of the 60-day public comment period, 1 comment was received.

Comment: OGIS commends OSD for providing access guidance to former Cabinet-level officials and former Presidential appointees (FPAs), including their personnel, aides, and official researchers, particularly in regard to the nine FOIA exemptions, summarized in the ''Table—Explanation of FOIA Exemptions.''

The Table describes Exemption (b)(4) as protecting ''trade secrets and commercial or financial information obtained from a *private* source which would cause substantial competitive harm to the source if disclosed.'' (Emphasis added) OGIS notes that Exemption 4 applies to material obtained from a variety of sources, both public and private. Such sources may include ''state governments, agencies of foreign governments, and Native American tribes or nations,'' according to the Department of Justice Guide to the Freedom of Information Act, *http://www.justice.gov/oip/foia_guide09/exemption4.pdf#_PAGE1.*

As such, OGIS suggests clarifying by changing ''from a private source'' to ''a non-U.S. Government source.''

Response: OSD concurs and, in consultation with the OSD FOIA Office, we will include in the next revision or update of the regulation.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' because the rule does not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 197

Historical records, Research.

Accordingly, 32 CFR part 197 is revised to read as follows:

PART 197—HISTORICAL RESEARCH IN THE FILES OF THE OFFICE OF THE SECRETARY OF DEFENSE (OSD)

Sec.
197.1 Purpose.
197.2 Applicability.
197.3 Definitions.
197.4 Policy.
197.5 Responsibilities.
197.6 Procedures.
Appendix A to Part 197—Explanation of FOIA Exemptions and Classification Categories

Authority: 5 U.S.C. 301, Executive Order 13526, 5 U.S.C. 552b, and Pub. L. 102–138.

§ 197.1 Purpose.

This part, in accordance with the authority in DoD Directive 5110.4, implements policy and updates procedures for the programs that permit authorized personnel to perform historical research in records created by or in the custody of Office of the Secretary of Defense (OSD) consistent with Executive Order 13526; DoD Manual 5230.30, ''DoD Mandatory Declassification Review (MDR) Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523030m.pdf*); 32 CFR part 286; 32 CFR part 310; DoD Manual 5200.01, ''DoD Information Security Program'' Volumes 1–4 (available at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf, http://www.dtic.mil/whs/directives/corres/pdf/520001_vol2.pdf, http://www.dtic.mil/whs/directives/corres/pdf/520001_vol3.pdf,* and *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol4.pdf*); 36 CFR 1230.10 and 36 CFR part 1236; DoD Directive 5230.09, ''Clearance of DoD Information for Public Release'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523009p.pdf*); and 32 CFR 197.5.

§ 197.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Defense Agencies, and the DoD Field Activities in the National Capital Region that are serviced by Washington Headquarters Services (WHS) (referred to collectively in this part as the ''WHS-Serviced Components'').

(b) All historical researchers as defined in § 197.3.

(c) Cabinet Level Officials, Former Presidential Appointees (FPAs) to include their personnel, aides and researchers, seeking access to records containing information they originated, reviewed, signed, or received while serving in an official capacity.

§ 197.3 Definitions.

The following definitions apply to this part:

Access. The availability of or the permission to consult records, archives, or manuscripts. The ability and opportunity to obtain classified, unclassified, or administratively controlled information or records.

Electronic records. Records stored in a form that only a computer can process and satisfies the definition of a federal record, also referred to as machine-readable records or automatic data processing records (including email).

Historical researchers or requestors. A person approved to conduct research in OSD files for historical information to use in a DoD approved project (*e.g.,* agency historical office projects, books, articles, studies, or reports), regardless of the person's employment status. Excluded are Military personnel assigned to OSD; OSD employees, contractors, and students conducting research in response to academic requirements.

Records (also referred to as federal records or official records). All books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the U.S. Government or because of the informational value of data in them.

§ 197.4 Policy.

It is OSD policy that:

(a) Pursuant to Executive Order 13526, anyone requesting access to classified material must possess the requisite security clearance.

(b) Members of the public seeking the declassification of DoD documents under the provisions of section 3.5 of Executive Order 13526 will contact the appropriate OSD Component as listed in DoD Manual 5230.30.

(c) Records and information requested by FPA and approved historical researchers will be accessed at a facility under the control of the National Archives and Records Administration (NARA), NARA's Archives II in College Park, Maryland, a Presidential library, or an appropriate U.S. military facility or a DoD activity in accordance with Vol 3 of DoD Manual 5200.01, ''DoD Information Security Program,'' February 24, 2012, as amended.

(d) Access to records and information will be limited to the specific records within the scope of the proposed research request over which OSD has authority and to any other records for which the written consent of other agencies with authority has been granted in accordance with Vol 3 of DoD Manual 5200.01, ''DoD Information Security Program,'' February 24, 2012, as amended.

(e) Access to unclassified OSD Component records and information will be permitted consistent with the restrictions of the exemptions of 5 U.S.C. 552(b) (also known and referred to in this part as the ''Freedom of Information Act'' (FOIA), 32 CFR part 286, § 197.5 of this part, and consistent with 32 CFR part 310. The procedures for access to classified information will be used if the requested unclassified information is contained in OSD files whose overall markings are classified.

(f) Except as otherwise provided in DoD Manual 5200.01 volume 3, no person may have access to classified information unless that person has been determined to be trustworthy and access is essential to the accomplishment of a lawful and authorized purpose.

(g) Persons outside the Executive Branch who are engaged in approved historical research projects may be granted access to classified information, consistent with the provisions of Executive Order 13526 and DoD Manual 5200.01 volume 1 provided that the OSD official with classification jurisdiction over that information grants access.

(h) Contractors working for Executive Branch agencies may be allowed access to classified OSD Component files provided the contractors meet all the required criteria for such access as an historical researcher including the appropriate level of personnel security clearance set forth in paragraphs (a) and (i) of this section. No copies of OSD records and information may be released directly to the contractors. The Washington Headquarters Services Records and Declassification Division (WHS/RDD) will be responsible for ensuring that the contractor safeguards the documents and the information is only used for the project for which it was requested per section 4.1 of Executive Order 13526, ''Classified National Security Information,'' December 29, 2009.

(i) All DoD-employed requesters, to include DoD contractors, must have critical nuclear weapons design information (CNWDI) to access CNWDI information. All other non DoD and non-Executive Branch personnel must have a Department of Energy-issued ''Q'' clearance to access CNWDI information in accordance with DoD Manual 5220.22, ''National Industrial Security Program Operating Manual (NISPOM),'' February 28, 2006, as amended.

(j) The removal of federal records and information from OSD custody is not authorized; this includes copies and email according to 36 CFR 1230.10. Copies of records and information that are national security classified will remain under the control of the agency.

(k) Access for FPAs is limited to records they originated, reviewed, signed, or received while serving as Presidential appointees, unless there is another basis for providing access in accordance with Vol 3 of DoD Manual 5200.01, ''DoD Information Security Program,'' February 24, 2012, as amended.

(l) Authorization is required from all agencies whose classified information is, or is expected to be, in the requested files prior to granting approval for access. Separate authorizations for access to records and information maintained in OSD Component office files or at the federal records centers will not be required in accordance with Vol 3 of DoD Manual 5200.01, ''DoD Information Security Program,'' February 24, 2012, as amended.

§ 197.5 Responsibilities.

(a) The Director of Administration (DA), Office of the Deputy Chief Management Officer (ODCMO), or designee is the approval authority for access to DoD information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions in accordance with DoD Directive 5110.4 and DoD Manual 5230.30.

(b) *OSD Records Administrator.* Under the authority, direction, and control of the DA, ODCMO, the OSD Records Administrator:

(1) Exercises approval authority for research access to OSD and WHS Serviced Components records, information, and the Historical Research Program.

(2) Maintains records necessary to process and monitor each case.

(3) Obtains all required authorizations.

(4) Obtains, when warranted, the legal opinion of the General Counsel of the

Department of Defense regarding the requested access.

(5) Coordinates, with the originator, on the public release review on documents selected by the researchers for use in unclassified projects in accordance with DoD Directive 5230.09 and DoD Instruction 5230.29, ''Security and Policy Review of DoD Information for Public Release'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/523029p.pdf*).

(6) Coordinates requests with the OSD Historian.

(7) Provides prospective researchers the procedures necessary for requesting access to OSD Component files.

(c) The WHS-serviced Components heads, when requested:

(1) Determine whether access is for a lawful and authorized government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

§ 197.6 Procedures.

(a) *Procedures for historical researchers permanently assigned within the Executive Branch working on official projects.* (1) In accordance with § 197.5, the WHS-serviced Components heads, when requested, will:

(i) Make a written determination that the requested access is essential to the accomplishment of a lawful and authorized U.S. Government purpose, stating whether the requested records can be made available. If disapproved, cite specific reasons.

(ii) Provide the location of the requested records, including accession and box numbers if the material has been retired to the Washington National Records Center (WNRC).

(iii) Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

(2) The historical researcher or requestor will:

(i) Submit a request for access to OSD files to: OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Drive, Suite 02F09–02, Alexandria, VA 22350–3100.

(ii) All requests must be signed by an appropriate official and must contain:

(A) The name(s) of the researcher(s) and any assistant(s), level of security clearance, and the federal agency, institute, or company to which the researcher is assigned.

(B) A statement on the purpose of the project, including whether the final product is to be classified or unclassified.

(C) An explicit description of the information being requested and, if known, the originating office, so that the identification and location of the information may be facilitated.

(D) Appropriate higher authorization of the request.

(E) Ensure researcher's security manager or personnel security office verifies his or her security clearances in writing to the OSD Records Administrator's Security Manager.

(iii) Maintain the file integrity of the records being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

(iv) Make copies of any documents pertinent to the project, ensuring that staples are carefully removed and that the documents are re-stapled before they are replaced in the folder.

(v) Submit the completed manuscript for review prior to public presentation or publication to: WHS/Chief, Security Review Division, Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301–1155.

(vi) If the requester is an official historian of a federal agency requiring access to DoD records at the National Archives facilities or a Presidential library, the requested must be addressed directly to the pertinent facility with an information copy sent to the OSD Records Administrator. The historian's security clearances must be verified to the National Archives or the Presidential library.

(3) The use of computers, laptops, computer tablets, personal digital assistants, recorders, or similar devices listed in § 197.6(f) is prohibited. Researchers will use letter-sized paper (approximately 8½ by 11 inches), writing on only one side of the page. Each page of notes must pertain to only one document.

(4) The following applies to all notes taken during research:

(i) All notes are considered classified at the level of the document from which they were taken.

(ii) Indicate at the top of each page of notes the document:

(A) Originator.

(B) Date.

(C) Subject (if the subject is classified, indicate the classification).

(D) Folder number or other identification.

(E) Accession number and box number in which the document was found.

(F) Security classification of the document.

(iii) Number each page of notes consecutively.

(iv) Leave the last 1½ inches on the bottom of each page of notes blank for use by the reviewing agencies.

(v) Ensure the notes are legible, in English, and in black ink.

(vi) All notes must be given to the staff at the end of each day. The facility staff will forward the notes to the OSD Records Administrator for an official review and release to the researcher.

(5) The OSD Records Administrator will:

(i) Process all requests from Executive Branch employees requesting access to OSD Component files for official projects.

(ii) Determine which OSD Component originated the requested records and, if necessary, request an access determination from the OSD Component and the location of the requested records, including but not limited to electronic information systems, databases or accession number and box numbers if the hardcopy records have been retired offsite.

(iii) Request authorization for access from other OSD Component as necessary.

(A) Official historians employed by federal agencies may have access to the classified information of any other agency found in DoD files, as long as authorization for access has been obtained from these agencies.

(B) If the requester is not an official historian, authorization for access must be obtained from the Central Intelligence Agency (CIA), National Security Council (NSC), Department of State (DOS), and any other non-DoD agency whose classified information is expected to be found in the files to be accessed.

(iv) Make a written determination as to the researcher's trustworthiness based on the researcher having been issued a security clearance.

(v) Compile all information on the request for access to classified information, to include evidence of an appropriately issued personnel security clearance, and forward the information to the DA, ODCMO; OSD Component or designee, who will make the access determination.

(vi) Notify the researcher of the authorization and conditions for access to the requested records or of the denial of access and the reason(s).

(vii) Ensure that all conditions for access and release of information for use in the project are met.

(viii) Make all necessary arrangements for the researcher to visit the review location and review the requested records.

(ix) Provide all requested records and information under OSD control in electronic formats consistent with 36 CFR part 1236. For all other information, a staff member will be assigned to supervise the researcher's copying of pertinent documents at the assigned facility.

(x) If the records are maintained in the OSD Component's working files, arrange for the material to be converted to electronic format for the researchers to review.

(xi) Notify the National Archives, Presidential library, or military facility of the authorization and access conditions of all researchers approved to research OSD records held in those facilities.

(b) *Procedures for the DOS Foreign Relations of the United States (FRUS) series.* (1) The DOS historians will:

(i) Submit requests for access to OSD files. The request should list the names and security clearances for the historians doing the research and an explicit description, including the accession and box numbers, of the files being requested. Submit request to: OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Dr, Suite 02F09–02, Alexandria, VA 22380–2100.

(ii) Submit to the OSD Records Administrator requests for access for members of the Advisory Committee on Historical Diplomatic Documentation to documents copied by the DOS historians for the series or the files reviewed to obtain the documents.

(iii) Request that the DOS Diplomatic Security staff verify all security clearances in writing to the OSD Records Administrator's Security Manager.

(iv) Give all document copies to the OSD Records Administrator staff member who is supervising the copying as they are made.

(v) Submit any OSD documents desired for use or pages of the manuscript containing OSD classified information for declassification review prior to publication to the Chief, Security Review Division at: WHS/Chief, Security Review Division, Office of Security Review, 1155 Defense Pentagon, Washington, DC 20301–1155.

(2) The OSD Records Administrator will:

(i) Determine the location of the records being requested by the DOS for the FRUS series according to Title IV of Public Law 102–138, ''The Foreign Relations of the United States Historical Series.''

(ii) Act as a liaison with the CIA, NSC, and any other non-OSD agency for access by DOS historians to records and information and such non-DoD agency classified information expected to be interfiled with the requested OSD records.

(iii) Obtain written verification from the DOS Diplomatic Security staff of all security clearances, including ''Q'' clearances.

(iv) Make all necessary arrangements for the DOS historians to access, review, and copy documents selected for use in their research in accordance with procedures in accordance with § 197.6(a).

(v) Provide a staff member to supervise document copying in accordance with the guidance provided in § 197.6(d) of this part.

(vi) Compile a list of the documents that were copied by the DOS historians.

(vii) Scan and transfer copies to DOS in NARA an approved electronic format.

(viii) Submit to the respective agency a list of CIA and NSC documents copied and released to the DOS historians.

(ix) Process DOS Historian Office requests for members of the Advisory Committee on Historical Diplomatic Documentation with appropriate security clearances to have access to documents copied and used by the DOS historians to compile the FRUS series volumes or to the files that were reviewed to obtain the copied documents. Make all necessary arrangements for the Advisory Committee to review any documents that are at the WNRC.

(c) *Procedures for historical researchers not permanently assigned to the Executive Branch.* (1) The WHS-serviced Components heads, when required, will:

(i) Recommend to the DA, ODCMO, or his or her designee, approval or disapproval of requests to access OSD information. State whether access to, release, and clearance of the requested information is in the interest of national security and whether the information can be made available. If disapproval is recommended, specific reasons should be cited.

(ii) Provide the location of the requested information, including but not limited to the office, component, information system or accession and box numbers for any records that have been retired to the WNRC.

(iii) Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

(2) The OSD Records Administrator will:

(i) Process all requests from non-Executive Branch researchers for access to OSD or WHS-serviced Components files. Certify via the WHS Security Officer that the requester has the appropriate clearances.

(ii) Determine which OSD Component originated the requested records and, as necessary, obtain written recommendations for the research to review the classified information.

(iii) Obtain prior authorization to review their classified information from the DOS, CIA, NSC, and any other agency whose classified information is expected to be interfiled with OSD records.

(iv) Obtain agreement from the researcher(s) and any assistant(s) that they will comply with conditions governing access to the classified information (see Figure to § 197.6).

Figure to § 197.6. Form Letter – Conditions Governing Access to Official Records for Historical Research Purposes

(LETTERHEAD STATIONERY)

Date:

OSD Records Administrator

WHS/Records and Declassification Division

4800 Mark Center Drive

Suite 02F09-02

Alexandria Va 22350-3100

To Whom It May Concern:

I understand that the information to which I have requested access for historical research purposes may include information concerning the national defense or foreign relations of the United States. Unauthorized disclosure could reasonably be expected to cause damage, serious damage, or exceptionally grave damage to the national security regardless of the classification of that information. If granted access, I therefore agree to the following conditions governing access to OSD files:

1. I will abide by any rules and restrictions issued in your letter of authorization, including those of other agencies whose information is interfiled with that of the OSD.

2. I agree to safeguard the classified information to which I gain possession or knowledge in a manner consistent with Part 4 of Executive Order 13526, "Classified National Security Information," and the applicable provisions of the DoD issuances concerning safeguarding classified information, including DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive Compartmented Information."

3. I agree not to reveal to any person or agency any information obtained as a result of this access except as authorized in the terms of your authorization letter or a follow-on letter. I further agree that I will not use the information for purposes other than those set forth in my request for access.

4. I agree to submit my research notes to determine if classified information is contained in them before their removal from the specific area assigned to me for research. I further agree to submit my manuscript for a security review before its publication or presentation. In each of these reviews, I agree to comply with any decision of the reviewing official in the interests of the security of the United States, including the retention or deletion of any classified parts of such notes and manuscript whenever the federal agency concerned deems such retention or deletion necessary.

5. I understand that failure to abide by the conditions in this statement constitutes sufficient cause for canceling my access to OSD information and for denying me any future access and may subject me to criminal provisions of federal law as referred to in paragraph 6.

6. I have been informed that provisions of Title 18 of the United States Code impose criminal penalties, under certain circumstances, for the unauthorized disclosure, loss, copying, or destruction of defense information.

7. Removal Subject to a Nondisclosure Agreement. Cabinet Level officials may remove copies of unclassified information and/or materials not previously released to the public or with clearly identified restrictions upon request of the departing official if he or she signs a non-disclosure agreement. The former official must agree not to release or publish the information, orally or in writings (paper or electronically), without the written approval of the DoD. Upon request by the Cabinet level official, the DoD will perform an official review of the information. The review may result in possible denial or redaction of the information. The Director of Administration and Management will serve as the appellate authority to any denials or redactions that may be contested.

Signature

THIS STATEMENT IS MADE TO THE UNITED STATES GOVERNMENT TO ENABLE IT TO EXERCISE ITS RESPONSIBILITY FOR THE PROTECTION OF INFORMATION AFFECTING THE NATIONAL SECURITY. I UNDERSTAND THAT ANY MATERIAL FALSE STATEMENT THAT I MAKE KNOWINGLY AND WILLFULLY SHALL SUBJECT ME TO THE PENALTIES OF TITLE 18, U.S. CODE, SECTION 1001.

(v) If the requester is an FPA, submit a memorandum after completion of the actions described in this part to WHS, Human Resources Directorate, Security Operations Division, requesting the issuance (including an interim) or

reinstatement of an inactive security clearance for the FPA and any assistant and a copy of any signed form letters. The Security Division will contact the researcher(s) and any assistant(s) to obtain the forms required to reinstate or initiate the personnel security investigation to obtain a security clearance. Upon completion of the adjudication process, notify the OSD Records Administrator in writing of the reinstatement, issuance, or denial of a security clearance.

(vi) Make a written determination as to the researcher's trustworthiness based on his or her having been issued a security clearance.

(vii) Compile all information on the request for access to classified information, to include either evidence of an appropriately issued or reinstated personnel security clearance. Forward the information to the DA, ODCMO or designee, who will make the final determination on the applicant's eligibility for access to classified OSD or WHS-serviced Component files. If the determination is favorable, the DA, ODCMO or designee will then execute an authorization for access, which will be valid for not more than 2 years.

(viii) Notify the researcher of the approval or disapproval of the request. If the request has been approved, the notification will identify the files authorized for review and specify that the authorization:

(A) Is approved for a predetermined time period.

(B) Is limited to the designated files.

(C) Does not include access to records and/or information of other federal agencies, unless such access has been specifically authorized by those agencies.

(ix) Make all necessary arrangements for the researcher to visit the WNRC and review any requested records that have been retired there, to include written authorization, conditions for the access, and a copy of the security clearance verification.

(x) If the requested records are at the WNRC, make all necessary arrangements for the scanning of documents.

(xi) If the requested records are maintained in OSD or WHS-serviced Component working files, make arrangements for the researcher to review the requested information and, if authorized, copy pertinent documents in the OSD or WHS-serviced Component's office. Provide the OSD Component with a copy of the written authorization and conditions under which the access is permitted.

(xii) Compile a list of all the documents requested by the researcher.

(xiii) Coordinate the official review on all notes taken and documents copied by the researcher.

(xiv) If the classified information to be reviewed is on file at the National Archives, a Presidential library, or other facility, notify the pertinent facility in writing of the authorization and conditions for access.

(3) The researcher will:

(i) Submit a request for access to OSD Component files to OSD Records Administrator, WHS/Records and Declassification Division, 4800 Mark Center Drive, Suite 02F09–02, Alexandria VA 22350–3100. The request must contain:

(A) As explicit a description as possible of the information being requested so that identification and location of the information may be facilitated.

(B) A statement as to how the information will be used, including whether the final project is to be classified or unclassified.

(C) A statement as to whether the researcher has a security clearance, including the level of clearance and the name of the issuing agency.

(D) The names of any persons who will be assisting the researcher with the project. If the assistants have security clearances, provide the level of clearance and the name of the issuing agency.

(E) A signed copy of their agreement (see Figure) to safeguard the information and to authorize a review of any notes and manuscript for a determination that they contain no classified information. Each project assistant must also sign a copy of the letter.

(F) The forms necessary to obtain a security clearance, if the requester is an FPA without an active security clearance. Each project assistant without an active security clearance will also need to complete these forms. If the FPA or assistant have current security clearances, their personnel security office must provide verification in writing to the OSD Records Administrator's Security Manager.

(ii) Maintain the integrity of the files being reviewed, ensuring that no records are removed and that all folders are replaced in the correct box in their proper order.

(iii) If copies are authorized, give all copies to the custodian of the files at the end of each day. The custodian will forward the copies of the documents to the OSD Records Administrator for a declassification review and release to the requester.

(A) For records at the WNRC, if authorized, provide the requested information in an electronic format. Review will occur only in the presence of an OSD Records Administrator staff member.

(B) Ensure that all staples are carefully removed and that the documents are re-stapled before the documents are replaced in the folder.

(C) Submit all classified and unclassified notes made from the records to the custodian of the files at the end of each day of research. The custodian will transmit the notes to the OSD Records Administrator for an official review and release to the researcher at the completion of researcher's project.

(D) Submit the final manuscript to the OSD Records Administrator for forwarding to the Chief, Security Review Division, Office of Security Review, for a security review and public release clearance in accordance with DoD Directive 5230.09 and DoD 5220.22–M, ''National Industrial Security Program Operating Manual (NISPOM)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf*) prior to publication, presentation, or any other public use.

(d) *Procedures for document review for the FRUS series.* (1) When documents are being reviewed, a WHS/RDD staff member must be present at all times.

(2) The records maybe reviewed at a Presidential Library Archives II, College Park Maryland, WNRC, Suitland, Maryland, or an appropriate military facility. All requested information will remain under the control of the WHS/RDD staff until a public release review is completed, and then provided in electronic formats.

(3) If the requested records have been reviewed in accordance with the automatic declassification provisions of Executive Order 13526, any tabs removed during the research and copying must be replaced in accordance with DoD Manual 5200.01 volume 2.

(4) The number of boxes to be reviewed will determine which of the following procedures will apply. The WHS/RDD staff member will make that determination at the time the request is processed. When the historian completes the review of the boxes, he or she must contact the WHS/RDD to establish a final schedule for scanning the documents. To avoid a possible delay, a tentative schedule will be established at the time that the review schedule is set.

(i) For 24 boxes or fewer, review and scanning will take place simultaneously. Estimated time to complete scanning is 7 work days.

(ii) For 25 boxes or more, the historian will review the boxes and mark the

documents that are to be scanned using WHS/RDD authorized reproduction tabs.

(iii) If the review occurs at facilities that OSD does not control ownership of the document, the documents must be given to the WHS/RDD staff member for transmittal for processing.

(5) WHS/RDD will notify the historian when the documents are ready to be picked up. All administrative procedures for classified material transfers will be followed in accordance with DoD Manual 5200.01 volume 1 and DoD 5220.22–M and appropriate receipt for unclassified information will be used.

(e) *Procedures for copying documents.* (1) The records will be reviewed and copied at a Presidential Library, Archives II, College Park Maryland, WNRC, Suitland, Maryland, or an appropriate U.S. military facility.

(2) If the requested records have been reviewed in accordance with the automatic declassification provisions of Executive Order 13526 any tabs removed during the research and copying must be replaced in accordance with DoD Manual 5200.01 volume 2.

(3) The researcher will mark the documents that he or she wants to copy using WHS/RDD authorized reproduction tabs.

(4) Any notes taken during the review process must be given to the WHS/RDD staff member present for transmittal to the WHS/RDD.

(5) All reproduction charges are to the responsibility of the researcher.

(6) All documents requested will be copied to an approved electronic format by WHS/RDD staff after official review.

(i) The researcher will need to bring paper, staples, staple remover, and stapler.

(ii) When the researcher completes the review of the boxes, he or she must contact the WHS/RDD to establish a final schedule for scanning the requested documents.

(iii) When the documents are scanned, the WHS/RDD will notify the researcher.

(iv) All questions pertaining to the review, copying, or transmittal of OSD documents must be addressed to the WHS/RDD staff member.

(f) *General guidelines for researching DoD records.* DoD records and information are unique and often cannot be replaced should they be lost or damaged. In order to protect its collections and archives, the OSD Records Administrator has set rules that researchers must follow.

(1) Researchers will work in room assigned. Researchers are not allowed in restricted areas.

(2) Special care must be taken in handling all records. Records may not be leaned on, written on, folded, traced from, or handled in any way likely to damage them.

(3) Records should be kept in the same order in which they are presented.

(4) Items that may not be brought into these research areas include, but are not limited to:

(i) Briefcases.

(ii) Cases for equipment (laptop computers).

(iii) Computers. This includes laptops, tablet computers, personal digital assistants, smart phones, and other similar devices.

(iv) Cellular phones.

(v) Computer peripherals including handheld document scanners and digital or analog cameras.

(vi) Containers larger than 9.5″ × 6.25″ (*e.g.,* paper bags, boxes, backpacks, shopping bags, and sleeping bags).

(vii) Food, drinks (includes bottled water) and cigarettes, cigars, or pipes.

(viii) Handbags or purses larger than 9.5″ × 6.25″.

(ix) Luggage.

(x) Musical instruments and their cases.

(xi) Newspapers.

(xii) Outerwear (*e.g.,* raincoats and overcoats).

(xiii) Pets (exception for service animals, *i.e.,* any guide dog or signal dog that is trained to provide a service to a person with a disability).

(xiv) Scissors or other cutting implements.

(xv) Televisions and audio or video equipment.

(xvi) Umbrellas.

(5) Eating, drinking, or smoking is prohibited.

Appendix A to Part 197—Explanation of FOIA Exemptions and Classification Categories

(a) *Explanation of FOIA Exemptions and Classification Categories*—(1) *Explanation of FOIA Exemptions.* Exemptions and their explanations are provided in the Table to Appendix A. See chapter III of 32 CFR part 286 for further information.

TABLE TO APPENDIX A—EXPLANATION OF FOIA EXEMPTIONS

Exemption	Explanation
(b)(1)	Applies to records and information currently and properly classified in the interest of national security.
(b)(2)	Applies to records related solely to the internal personnel rules and practices of an agency.
(b)(3)	Applies to records and information protected by another law that specifically exempts the information from public release.
(b)(4)	Applies to records and information on trade secrets and commercial or financial information obtained from a *private* source which would cause substantial competitive harm to the source if disclosed.
(b)(5)	Applies to records and information of internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations.
(b)(6)	Applies to records or information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals.
(b)(7)	Applies to records or information compiled for law enforcement purposes that could: (a) Reasonably be expected to interfere with law enforcement proceedings; (b) deprive a person of a right to a fair trial or impartial adjudication; (c) reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; (d) disclose the identity of a confidential source; (e) disclose investigative techniques and procedures; or (f) reasonably be expected to endanger the life or physical safety of any individual.
(b)(8)	Applies to records and information for the use of any agency responsible for the regulation or supervision of financial institutions.
(b)(9)	Applies to records and information containing geological and geophysical information (including maps) concerning wells.

(2) *Classification Categories.* Information will not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of Executive Order 13526, and it pertains to one or more of the following:

(i) Military plans, weapons systems, or operations;

(ii) Foreign government information;

(iii) Intelligence activities (including covert action), intelligence sources or methods, or cryptology;

(iv) Foreign relations or foreign activities of the United States, including confidential sources;

(v) Scientific, technological, or economic matters relating to the national security;

(vi) U.S. Government programs for safeguarding nuclear materials or facilities;

(vii) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(viii) The development, production, or use of weapons of mass destruction.

(b) [Reserved]

Dated: October 22, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27393 Filed 10–27–15; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2014–07]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: In this final rule, the Librarian of Congress adopts exemptions to the provision of the Digital Millennium Copyright Act (''DMCA'') that prohibits circumvention of technological measures that control access to copyrighted works, codified in section 1201(a)(1) of title 17 of the United States Code. As required under the statute, the Register of Copyrights, following a public proceeding, submitted a Recommendation concerning proposed exemptions to the Librarian of Congress. After careful consideration, the Librarian adopts final regulations based upon the Register's Recommendation.

DATES: Effective October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at *jcharlesworth@loc.gov* or by telephone at 202–707–8350; Sarang V. Damle, Deputy General Counsel, by email at *sdam@loc.gov* or by telephone at 202–707–8350; or Stephen Ruwe, Assistant General Counsel, by email at *sruwe@loc.gov* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: The Librarian of Congress, pursuant to section 1201(a)(1) of title 17, United States Code, has determined in this sixth triennial rulemaking proceeding that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of certain classes of such works. This determination is based upon the Recommendation of the Register of Copyrights, which was transmitted to the Librarian on October 8, 2015.[1]

The below discussion summarizes the rulemaking proceeding and Register's Recommendation, announces the Librarian's determination, and publishes the regulatory text specifying the exempted classes of works. A more complete discussion of the rulemaking process, the evidentiary record, and the Register's analysis can be found in the Register's Recommendation, which is posted at *www.copyright.gov/1201/.*

I. Background

A. Statutory Requirements

Congress enacted the DMCA in 1998 to implement certain provisions of the WIPO Copyright and WIPO Performances and Phonograms Treaties. Among other things, title I of the DMCA, which added a new chapter 12 to title 17 of the U.S. Code, prohibits circumvention of technological measures employed by or on behalf of copyright owners to protect access to their works. In enacting this aspect of the law, Congress observed that technological protection measures (''TPMs'') can ''support new ways of disseminating copyrighted materials to users, and . . . safeguard the availability of legitimate uses of those materials by individuals.''[2]

Section 1201(a)(1) provides in pertinent part that ''[n]o person shall circumvent a technological measure that effectively controls access to a work protected under [title 17].'' Under the statute, to ''circumvent a technological measure'' means ''to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner.''[3] A technological measure that ''effectively controls access to a work'' is one that ''in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.''[4]

Section 1201(a)(1), however, also includes what Congress characterized as a ''fail-safe'' mechanism,[5] which requires the Librarian of Congress, following a rulemaking proceeding, to publish any class of copyrighted works as to which the Librarian has determined that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected by the prohibition against circumvention in the succeeding three-year period, thereby exempting that class from the prohibition for that period.[6] The Librarian's determination to grant an exemption is based upon the recommendation of the Register of Copyrights, who conducts the rulemaking proceeding.[7] Congress directed the Register, in turn, to consult with the Assistant Secretary for Communications and Information of the Department of Commerce, who oversees the National Telecommunications and Information Administration (''NTIA''), in the course of formulating her recommendation.[8]

The primary responsibility of the Register and the Librarian in the rulemaking proceeding is to assess whether the implementation of access controls impairs the ability of individuals to make noninfringing uses of copyrighted works within the meaning of section 1201(a)(1). To do this, the Register develops a comprehensive administrative record using information submitted by interested members of the public, and makes recommendations to the Librarian concerning whether exemptions are warranted based on that record.

Under the statutory framework, the Librarian, and thus the Register, must consider ''(i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

[1] Register of Copyrights, Section 1201 Rulemaking: Sixth Triennial Proceeding to Determine Exemptions to the Prohibition on Circumvention, Recommendation of the Register of Copyrights (Oct. 2015) (''Register's Recommendation'').

[2] Staff of H. Comm. on the Judiciary, 105th Cong., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 6 (Comm. Print 1998).

[3] 17 U.S.C. 1201(a)(3)(A).

[4] 17 U.S.C. 1201(a)(3)(B).

[5] *See* H.R. Rep. No. 105–551, pt. 2, at 36 (1998).

[6] *See* 17 U.S.C. 1201(a)(1).

[7] 17 U.S.C. 1201(a)(1)(C).

[8] *Id.*

(v) such other factors as the Librarian considers appropriate.'' [9] As noted above, the Register must also consult with the Assistant Secretary who oversees NTIA, and report and comment on his views, in providing her Recommendation. Upon receipt of the Recommendation, the Librarian is responsible for promulgating the final rule setting forth any exempted classes of works.

Significantly, exemptions adopted by rule under section 1201(a)(1) apply only to the conduct of circumventing a technological measure that controls access to a copyrighted work. Other parts of section 1201, by contrast, address the manufacture and provision of—or ''trafficking'' in—products and services designed for purposes of circumvention. Section 1201(a)(2) bars trafficking in products and services that are used to circumvent technological measures that control access to copyrighted works (for example, a password needed to open a media file),[10] while section 1201(b) bars trafficking in products and services used to circumvent technological measures that protect the exclusive rights of the copyright owner in their works (for example, technology that prevents the work from being reproduced).[11] The Librarian of Congress has no authority to adopt exemptions for the anti-trafficking prohibitions contained in section 1201(a)(2) or (b).[12]

More broadly, activities conducted under the regulatory exemptions must still comply with other applicable laws, including non-copyright provisions. Thus, while an exemption may specifically reference other laws of particular concern, any activities conducted under an exemption must be otherwise lawful.

Also significant is the fact that the statute contains certain permanent exemptions to permit specified uses. These include: Section 1201(d), which exempts certain activities of nonprofit libraries, archives, and educational institutions; section 1201(e), which exempts ''lawfully authorized investigative, protective, information security, or intelligence activity'' of a state or the federal government; section 1201(f), which exempts certain ''reverse engineering'' activities to facilitate interoperability; section 1201(g), which exempts certain types of research into encryption technologies; section 1201(h), which exempts certain activities to prevent the ''access of minors to material on the Internet''; section 1201(i), which exempts certain activities ''solely for the purpose of preventing the collection or dissemination of personally identifying information''; and section 1201(j), which exempts certain acts of ''security testing'' of computers and computer systems.

B. The Unlocking Consumer Choice and Wireless Competition Act

In 2014, Congress enacted the Unlocking Consumer Choice and Wireless Competition Act (''Unlocking Act''), effective as of August 1, 2014.[13] The Unlocking Act did three things. First, it replaced the exemption adopted in the 2012 triennial proceeding to enable certain wireless telephone handsets (*i.e.,* cellphones) to connect to wireless communication networks—a process commonly known as cellphone ''unlocking''—with a broader version of the exemption adopted by the Librarian in 2010. Second, the legislation provided that the circumvention permitted under the reinstated 2010 exemption, as well as any future exemptions to permit wireless telephone handsets or other wireless devices to connect to wireless telecommunications networks, may be initiated by the owner of the handset or device, by another person at the direction of the owner, or by a provider of commercial mobile radio or data services to enable such owner or a family member to connect to a wireless network when authorized by the network operator.[14] This directive is permanent, and is now reflected in the relevant regulations.[15] Third, the legislation directed the Librarian of Congress to consider as part of the current triennial proceeding whether to ''extend'' the cellphone unlocking exemption ''to include any other category of wireless devices'' based upon the recommendation of the Register, who in turn is to consult with the Assistant Secretary.[16] Accordingly, as part of this rulemaking proceeding, the Copyright Office solicited and evaluated several proposed unlocking exemptions for devices other than cellphones, as addressed in Proposed Classes 12 through 15 below.

C. Rulemaking Standards

In adopting the DMCA, Congress imposed legal and evidentiary requirements for the section 1201 rulemaking proceeding, as discussed in greater detail in the Register's Recommendation.[17] Those who seek an exemption from the prohibition on circumvention bear the burden of establishing that the requirements for granting an exemption have been satisfied by a preponderance of the evidence. In addition, the basis for an exemption must be established *de novo* in each triennial proceeding. That said, however, where a proponent is seeking the readoption of an existing exemption, it may attempt to satisfy its burden by demonstrating that the conditions that led to the adoption of the prior exemption continue to exist today (or that new conditions exist to justify the exemption). Assuming the proponent succeeds in making such a demonstration, it is incumbent upon any opponent of that exemption to rebut such evidence by showing that the exemption is no longer justified.

To establish a case for an exemption, proponents must show at a minimum (1) that uses affected by the prohibition on circumvention are or are likely to be noninfringing; and (2) that as a result of a technological measure controlling access to a copyrighted work, the prohibition is causing, or in the next three years is likely to cause, an adverse impact on those uses. In addition, the Librarian must also examine the statutory factors listed in section 1201(a)(1): (1) The availability for use of copyrighted works; (2) the availability for use of works for nonprofit archival, preservation, and educational purposes; (3) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (4) the effect of circumvention of technological measures on the market for or value of copyrighted works; and (5) such other factors as the Librarian considers appropriate. In some cases, weighing these factors requires the consideration of the benefits that the technological measure brings with respect to the overall creation and dissemination of works in the marketplace, in addition to any negative impact.

[9] *Id.*

[10] 17 U.S.C. 1201(a)(2).

[11] 17 U.S.C. 1201(b).

[12] *See* 17 U.S.C. 1201(a)(1)(E) (''Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.'').

[13] Public Law 113–144, 128 Stat. 1751 (2014). Subsequently, the Librarian adopted regulatory amendments to reflect the new legislation. *See* Exemption to Prohibition on Circumvention of Copyright Protection Systems for Wireless Telephone Handsets, 79 FR 50552 (Aug. 25, 2014) (codified at 37 CFR 201.40(b)(3), (c)).

[14] Unlocking Act sec. 2(a), (c).

[15] *See* 79 FR at 50554; *see also* 37 CFR 201.40(c).

[16] Unlocking Act sec. 2(b).

[17] *See* Register's Recommendation at 13–18.

Finally, when granting an exemption, section 1201(a)(1) specifies that the exemption adopted as part of this rulemaking must be defined based on ''a particular class of works.'' [18] Among other things, the determination of the appropriate scope of a ''class of works'' recommended for exemption may also take into account the adverse effects an exemption may have on the market for or value of copyrighted works. Accordingly, ''it can be appropriate to refine a class by reference to the use or user in order to remedy the adverse effect of the prohibition and to limit the adverse consequences of an exemption.'' [19]

II. History of the Sixth Triennial Proceeding

As the Register explains in the Recommendation, the administrative process employed in the rulemaking was revised for this triennial proceeding. In particular, the Copyright Office implemented certain procedural changes to make the process more accessible and understandable to the public, allow greater opportunity for participants to coordinate their efforts, encourage participants to submit effective factual and legal support for their positions, and reduce administrative burdens on both the participants and the Office. Among other things, the procedural changes included providing commenters with recommended template forms to use when submitting comments, and requiring commenters to submit separate comments for each proposed class.

On September 17, 2014, the Copyright Office published a Notice of Inquiry (''NOI'') in the **Federal Register** to initiate the sixth triennial rulemaking proceeding.[20] The NOI invited interested parties to submit petitions for proposed exemptions that set forth the essential elements of the exemption. The Office received forty-four petitions for proposed exemptions in response to the NOI.

Next, on December 12, 2014, the Office issued a Notice of Proposed Rulemaking (''NPRM'') that reviewed and grouped the proposed exemptions set forth in the petitions.[21] In the NPRM, the Copyright Office concluded that three of the petitions sought exemptions that could not be granted as a matter of law, and declined to put those proposals forward for public comment.[22] The Office grouped the remaining proposed exemptions into twenty-seven proposed classes of works. In some cases, overlapping proposals were merged into a single combined proposed class. In other cases, individual proposals that encompassed multiple proposed uses were subdivided into multiple classes to aid in the process of review. The Office then provided detailed guidance on the submission of comments, including a number of specific legal and factual areas of interest with respect to each proposed class.

The Office received nearly 40,000 comments in response to the NPRM, the vast majority of which consisted of relatively short statements of support or opposition without substantial legal argument or supporting evidence. A number of the longer submissions included multimedia evidence to illustrate points made in the written comments.

After receiving and studying the written comments, the Office held seven days of public hearings: In Los Angeles, at the UCLA School of Law, from May 19 to 21, 2015; and in Washington, DC, at the Library of Congress, from May 26 to 29, 2015. The Office heard testimony from sixty-three witnesses at the hearings, and received additional multimedia evidence. After the hearings, the Office issued a number of follow-up questions to participants, and received responses that have been made part of the administrative record.

As observed by various commenting parties, certain of the proposed exemptions presented issues potentially of concern to the Department of Transportation (''DOT''), the Environmental Protection Agency (''EPA''), and the Food and Drug Administration (''FDA''), and perhaps other regulatory agencies as well. The Copyright Office therefore sent letters to DOT, EPA and FDA informing them of the pendency of the rulemaking proceeding in case they wished to comment on the proposals. In response to these letters, the Office received responses from those agencies, and also from the California Air Resources Board (''California ARB''), which are also included in the record.

Throughout this triennial proceeding, as required under section 1201(a)(1), the Register has consulted with NTIA. In addition to providing procedural and substantive input throughout the rulemaking process, NTIA was represented along with Copyright Office staff at the public hearings held in Los Angeles and Washington, DC NTIA formally communicated its views on each of the proposed exemptions in recommendations delivered to the Register on September 18, 2015. NTIA's recommendations can be viewed at *copyright.gov/1201/2015/2015_NTIA_Letter.pdf.*

III. Summary of Register's Recommendation

A. Designated Classes

Based upon the record in this proceeding, the Register of Copyrights recommends that the Librarian determine that the classes of works described below be exempt from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Classes 1 to 7: Audiovisual Works—Educational and Derivative Uses [23]

Proponents of Proposed Classes 1 through 7 share the desire to circumvent technological protection measures employed on DVDs, Blu-ray discs and/or by various online streaming services to access motion pictures—a category under the Copyright Act that includes television programs and videos—in order to engage in noninfringing uses. Past rulemakings have granted exemptions relating to uses of motion picture excerpts for commentary or criticism by college and university faculty and staff and by kindergarten through twelfth-grade educators, as well as in noncommercial videos, documentary films, and nonfiction multimedia e-books offering film analysis. Past exemptions have been limited to circumvention of DVDs, online distribution services, and as a result of using screen-capture technology.

[18] 17 U.S.C. 1201(a)(1)(B).

[19] Recommendation of the Register of Copyrights in RM 2005–11, Rulemaking on Exemptions from Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies 19 (Nov. 17, 2006).

[20] Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 79 FR 55687 (Sept. 17, 2014) (''NOI'').

[21] Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 79 FR 73856, 73859 (Dec. 12, 2014) (''NPRM'').

[22] NPRM, 79 FR at 73859. Each of these petitions sought to permit circumvention of any and all TPMs that constituted ''digital rights management'' with respect to unspecified types of copyrighted works for the purpose of engaging in unidentified personal and/or consumer uses. *Id.* The Office explained that these proposed exemptions ran afoul of the statutory requirement that ''any exemptions adopted as part of this rulemaking must be defined based on 'a *particular class* of works.' '' *Id.* (quoting 17 U.S.C. 1201(a)(1)(B) (emphasis added)). The Office thus concluded that ''the sweeping type of exemption proposed by these three petitions'' could not be granted consistent with the standards of section 1201(a)(1). *Id.*

[23] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 24–106.

The petitions filed in this rulemaking sought to readopt and to some extent expand the previously granted exemptions, including to encompass Blu-ray discs (on the ground that a high-definition format is required for certain uses), to access audiovisual works that may not be motion pictures (such as video games), to permit the use of more than ''short portions'' of motion picture excerpts, and to extend to all ''fair uses'' rather than limiting the uses to criticism or comment. Some proponents sought to expand filmmaking uses to include narrative (or fictional) film, in addition to documentaries. Some proposals were focused on expanding the category of potential users of an exemption, such as to uses by museums, libraries and nonprofits, or by students and faculty participating in massive online open courses (''MOOCs''). The Copyright Office grouped these proposals into seven classes.

Proposed Class 1: This proposed class would allow college and university faculty and students to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for purposes of criticism and comment.

Class 1 was proposed by Professor Peter Decherney, the College Art Association, the International Communication Association, and the Society for Cinema and Media Studies (collectively, ''Joint Educators'') to allow, for example, film studies professors to circumvent DVDs in order to use motion picture clips in class lectures. A class covering such uses was adopted in the 2010 and 2012 rulemakings. Joint Educators asked that the exemption be expanded to include the ability to circumvent Blu-ray discs, to remove the limitation to ''short portions'' of motion picture excerpts, and to broaden the class to cover all ''audiovisual works'' for all ''educational purposes.''

Proposed Class 2: This proposed class would allow kindergarten through twelfth-grade educators and students to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for educational purposes.

Petitions for Proposed Class 2 were submitted by Professor Renee Hobbs and the Library Copyright Alliance (''LCA''), to allow, for example, a high school teacher to circumvent DVDs of various adaptations of Shakespeare's works in order to create a compilation of clips demonstrating the lasting influence of these works. Hobbs and LCA requested that the existing exemption for grades K–12 be expanded to include student uses rather than only uses by educators, to allow circumvention of Blu-ray discs, to remove the limitation to ''short portions'' of works, and to broaden the class to cover all ''audiovisual works'' for all ''educational purposes.''

Proposed Class 3: This proposed class would allow students and faculty participating in massive online open courses (''MOOCs'') to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for purposes of criticism and comment.

Joint Educators proposed Class 3, essentially seeking to expand the exemption for college and university faculty and students in Class 1 to include MOOCs, or online distance education courses offered on a broad scale. The exemption would, for example, allow a professor preparing an online lecture about the evolution of Chinese society to circumvent access controls in order to incorporate video clips documenting Chinese history and geography. Joint Educators' proposal included the ability to circumvent Blu-ray discs, to permit use of more than ''short portions'' of motion picture excerpts, and to allow use of all ''audiovisual works'' for all ''educational purposes.'' Joint Educators contended that the prohibition on circumvention of TPMs is inhibiting the introduction of certain types of courses, such as film studies, on MOOC platforms.

Proposed Class 4: This proposed class would allow educators and learners in libraries, museums and nonprofit organizations to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for educational purposes.

Professor Hobbs proposed Class 4 to allow, for example, educators in a community center adult education program to circumvent access controls in order to create video clips for purposes of discussing the portrayal of African-American women in a popular television show. The proposal encompassed ''audiovisual works'' for all ''educational uses,'' as well as the ability to circumvent Blu-ray discs. Hobbs expressed concern that the prohibition on circumvention prevents participants in digital and media literacy programs in informal learning settings from engaging in projects similar to those conducted on college and university campuses.

Proposed Class 5: This proposed class would allow circumvention of access controls on lawfully made and acquired motion pictures used in connection with multimedia e-book authorship.

Class 5 was jointly proposed by Authors Alliance and Bobette Buster to allow, for example, a sound editor and e-book author to circumvent DVDs or Blu-ray discs to incorporate brief film excerpts in an e-book entitled *Listening to Movies.* Proponents requested renewal of the previously granted exemption, and expansion of that exemption to encompass any genre of multimedia e-book (as opposed to uses only in nonfiction multimedia e-books offering film analysis), to allow circumvention of Blu-ray discs, to remove the limitation to ''short portions'' of motion picture excerpts, and to broaden the class to cover all ''audiovisual works.'' In general, proponents argued that the prohibition on circumvention hinders e-book authors' ability to criticize and comment on audiovisual works, some of which may only be accessible through DVD, Blu-ray or digitally transmitted sources.

Proposed Class 6: This proposed class would allow circumvention of access controls on lawfully made and acquired motion pictures for filmmaking purposes.

Class 6 was proposed by the International Documentary Association, Film Independent, Kartemquin Educational Films, Inc., and National Alliance for Media Arts and Culture (collectively, ''Joint Filmmakers'') to allow, for example, filmmakers to circumvent access controls on material streamed online in order to incorporate excerpts of news footage into documentaries. The proposal sought readoption of the existing exemption for documentary filmmaking uses, and its expansion to include narrative (or fictional) films, to permit circumvention of Blu-ray discs, and to remove the limitation to short portions of works. Joint Filmmakers stressed that much material is only available on DVD, Blu-ray and digitally transmitted video, and that circumvention of Blu-ray discs is necessary because, among other things, distribution standards require films to incorporate clips of high-definition quality.

Proposed Class 7: This proposed class would allow circumvention of access controls on lawfully made and acquired audiovisual works for the sole purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright.

Class 7 was proposed by Electronic Frontier Foundation (''EFF'') and the Organization for Transformative Works. Proponents sought to permit, for example, a fan of *James Bond* films to circumvent access controls on DVDs of these films in order to incorporate brief excerpts into a noncommercial video commenting on the portrayal of female characters in those films. The proposal

sought renewal of the existing exemption, and expansion of that exemption to Blu-ray discs and all ''noninfringing'' or ''fair'' uses. Proponents argued that the existing exemption has resulted in the creation of a wide variety of new, noninfringing works, and expansion of that exemption to Blu-ray discs is necessary because, among other things, there is a significant amount of material that can only be found in that format.

For each exemption, proponents argued that the requested exemption would facilitate fair uses of the accessed works—for example, because of the educational nature of the uses, or because it would permit the creation of a new work of authorship providing commentary on the underlying work. Specifically, Joint Educators argued that teaching, criticism, and commentary are enumerated as favored uses under section 107 and therefore, that the proposed uses in Classes 1 and 3 for colleges, universities, and MOOCs were highly likely to be fair. For Class 2, Hobbs provided examples of educators using film clips as teaching tools in connection with media literacy, history, literature, and film theory, and of students using excerpts in connection with National History Day projects, arguing that these uses were fair. Hobbs also contended that out-of-classroom educational programs should be able to make the same uses in Class 4. Proponents of Class 5 argued that uses of excerpts of motion picture clips in multimedia e-books intended for educational purposes are likely to be fair, citing examples of actual or prospective uses of motion picture excerpts in multimedia e-books for purposes of film criticism or analysis. For Class 6, Joint Filmmakers stated that the proposed uses in both documentary and narrative films are noninfringing fair uses that provide criticism and commentary, education about, and reporting on news and current events—activities that Congress has explicitly identified as fair uses. Finally, Class 7 proponents asserted that the purposes and character of noncommercial videos are highly transformative, and in support, submitted scholarly analysis of remix videos and evidence relating to fan video remixes that purportedly criticize and recontextualize the underlying narrative works.

For all of these audiovisual classes, the Office received no opposition to the renewal of the current exemptions; instead, opponents opposed expansion of those exemptions. The same parties opposed all seven classes—Joint Creators (representing the Motion Picture Association of America, the Entertainment Software Association (''ESA'') and the Recording Industry Association of America), DVD Copy Control Association, and the Advanced Access Content System Licensing Administrator (''AACS LA''). Opponents voiced parallel concerns across most of these audiovisual classes. In general, they contended that there are viable alternatives to circumvention that are adequate for many of the proposed uses, including clip licensing, screen-capture technology, streaming platforms such as TV Everywhere, disc-to-digital services, and digital rights libraries like UltraViolet. With respect to proposals to expand the exemptions to include Blu-ray discs, AACS LA and Joint Creators argued that the authorized circumvention of DVDs or online material provides a ready alternative to obtain material of sufficiently high quality for all the proposed uses. Opponents also urged that any expansion of the existing exemptions would likely harm the market for DVDs, Blu-ray discs, and other licensed uses.

Beyond these general points, opponents also made specific arguments concerning the individual proposed classes. In Class 1, opponents urged that alternatives to circumvention, including screen capture, were adequate for classroom uses outside film studies classes. In Class 2, opponents argued that the record lacks persuasive examples of K–12 student projects that require circumvention and that the record did not show a need to access material on Blu-ray discs. Opponents opposed granting any exemption for MOOCs in Class 3 arguing, among other things, that the uses are not likely to be noninfringing because the exemption would allow widespread distribution of works over the internet. With respect to museum, library or nonprofit educational programs in Class 4, opponents argued, among other things, that proponents had failed adequately to demonstrate specific adverse effects flowing from the prohibition on circumvention. In Class 5, opponents urged that no examples were presented to support expanding the exemption to fictional e-books or to circumvention of Blu-ray discs. In Class 6, opponents asserted that an exemption for fictional films would negatively impact the existing market for licensing of film clips. Finally, in Class 7, opponents argued that screen-capture software is an adequate alternative to proposed uses of Blu-ray material in noncommercial remix videos and that the existing regulatory language should be refined so as not to overlap with other classes addressing educational uses.

NTIA recommended renewing the current exemptions for educational and derivative uses, and expanding those exemptions in several respects. As a general matter, NTIA proposed that all of the exemptions should encompass ''motion pictures and similar audiovisual works'' on DVDs and Blu-ray discs, or obtained via online distribution services. NTIA rejected proposals to encompass all ''noninfringing'' or ''fair uses,'' instead recommending a more tailored approach. In Class 1, NTIA recommended an exemption for educational uses by college and university faculty and students, without limiting it to film studies and other courses requiring close analysis of works, although it did not explain why elimination of that distinction was warranted. In Class 2, NTIA recommended an exemption for K–12 educators, and for students in grades 6–12 engaging in video projects actively overseen by an instructor. In Class 3, NTIA recommended an exemption for MOOCs involving film and media analysis, but not for students enrolled in such MOOCs. In Class 4, NTIA recommended an exemption for instructors and students engaged in digital media and literacy programs in libraries, museums, and nonprofit organizations with an educational mission. In Classes 5 and 7, NTIA proposed renewing the exemptions for nonfiction or educational multimedia e-books offering film analysis, and for noncommercial videos, respectively, and expanding them to include Blu-ray discs, as with the other classes. Finally, in Class 6, NTIA proposed an exemption both for documentary films and for ''[n]arrative films portraying real events, where the prior work is used for its biographical or historically significant nature.''

In general, the Register recommended granting exemptions for almost all of these classes; in each case, the Register concluded that the uses are likely to be fair, that alternatives to circumvention were inadequate, and that the statutory factors taken together weighed in favor of the exemption. In each of Classes 1 through 7, the Register recommended retaining the requirement in the current exemptions that only ''short portions'' of works be used for purposes of ''criticism or comment.'' The Register explained that broader exemptions—covering longer portions for purposes of all ''fair'' or ''noninfringing'' uses—were unsupported by the record. The Register also explained that the exemptions should provide reasonable guidance to the public in terms of what uses are

likely to be fair, while at the same time mitigating undue consequences for copyright owners. The Register also found the record to not support an exemption for ''audiovisual works,'' as opposed to the somewhat narrower category of ''motion pictures,'' because proponents had failed to demonstrate a need to circumvent non-motion-picture audiovisual works (such as video games) in any of the proposed classes.

With respect to Class 1 in particular, the Register recommended granting an exemption for circumvention of TPMs on DVDs, Blu-ray discs, and digital transmissions of motion pictures by college and university faculty and students engaged in film studies classes or other courses requiring close analysis of film and media excerpts. The Register recommended an exemption to facilitate use of screen-capture technology for all types of courses, to address the possibility of circumvention when using this technology. The Register reasoned that this class (and Class 2) should continue to distinguish between purposes requiring close analysis of film and media excerpts and more general educational uses, on the ground that screen-capture technology is an adequate substitute for the latter uses.

With respect to Class 2, the Register recommended granting an exemption limited to circumvention of DVDs and digital transmissions for educators in grades K–12, including accredited general educational development (''GED'') programs, in film studies or other courses requiring close analysis of film and media excerpts. The Register found, however, that proponents submitted no examples where Blu-ray quality or Blu-ray-unique content was required for uses in K–12 classrooms. The Register also recommended an exemption to facilitate use of screen-capture technologies by educators in all types of courses. The Register found the evidentiary record of proposed uses by K–12 students to be insufficiently well developed to recommend an exemption for DVDs, digital transmissions, or Blu-ray discs because screen-capture software was likely to provide a ready alternative for those uses. Accordingly, the Register recommended a screen-capture exemption to facilitate uses by K–12 students.

With respect to Class 3, the Register recommended granting an exemption for circumvention of TPMs on DVDs, Blu-ray discs, and digital transmissions of motion pictures by faculty of MOOCs involving film studies or other courses requiring close analysis of film and media excerpts, under specified conditions borrowed from the TEACH Act, codified at 17 U.S.C. 110(2). The Register explained that key elements of the TEACH Act—such as the requirements that uses be limited to nonprofit educational institutions and transmissions be limited to enrolled students—should be incorporated into the exemption to ensure that the exemption is appropriately limited. The Register further found that the record did not support an exemption for student uses.

With respect to Class 4, the Register concluded that the record did not support an exemption permitting circumvention of DVDs, Blu-ray discs, or digital transmissions in connection with after-school or adult education media literacy programs (apart from GED programs). The Register found that the proposed uses in the record could be satisfied via screen capture, and thus recommended an exemption to facilitate uses of screen-capture software.

With respect to Classes 5 to 7, the Register recommended granting an exemption for circumvention of TPMs on DVDs, Blu-ray discs, and digital transmissions of motion pictures for use in nonfiction multimedia e-books offering film analysis, in documentary filmmaking, and in noncommercial videos. The Register also recommended an exemption to facilitate use of screen-capture technologies for these uses. For the multimedia e-books exemption (Class 5), the Register recommended maintaining the limitation to e-books offering film analysis, finding that the record did not support an exemption for other uses. With respect to the filmmaking exemption (Class 6), the Register could not conclude, based on the record, that the use of motion picture clips in narrative films was, on balance, likely to be noninfringing, especially in light of the potential effects on existing licensing markets for motion picture excerpts. Finally, in considering the noncommercial video exemption (Class 7), the Register rejected proponents' suggestion to expand the exemption to encompass ''primarily noncommercial'' videos, as well as opponents' suggestion to narrow the exemption to certain specified categories of noncommercial videos, finding neither change to be necessary.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where circumvention is undertaken solely in order to make use of short portions of the motion pictures for the purpose of criticism or comment in the following instances:

(i) For use in documentary filmmaking,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(ii) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity's use is noncommercial),

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(iii) For use in nonfiction multimedia e-books offering film analysis,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(iv) By college and university faculty and students, for educational purposes,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(v) By faculty of massive open online courses (MOOCs) offered by accredited

nonprofit educational institutions to officially enrolled students through online platforms (which platforms themselves may be operated for profit), for educational purposes, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students and relevant staff members, and applies technological measures that reasonably prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2),

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(vi) By kindergarten through twelfth-grade educators, including of accredited general educational development (GED) programs, for educational purposes,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(vii) By kindergarten through twelfth-grade students, including those in accredited general educational development (GED) programs, for educational purposes, where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted; and

(viii) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities for educational purposes, where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

2. Proposed Class 9: Literary Works Distributed Electronically—Assistive Technologies [24]

Proponents of Proposed Class 9 seek to allow circumvention of technological measures protecting literary works distributed in electronic form (including e-books, digital textbooks, and PDF articles) so that such works can be accessed by persons who are blind, visually impaired, or print disabled. The Librarian, upon the recommendation of the Register, granted an exemption in 2012 for these purposes.

The American Foundation for the Blind, American Council for the Blind,, Samuelson-Glushko Technology Law & Policy Clinic at Colorado Law, and LCA filed petitions seeking to have the Librarian renew the existing exemption.

Based on these petitions, the Copyright Office proposed the following class:

Proposed Class 9: This proposed class would allow circumvention of access controls on lawfully made and acquired literary works distributed electronically for purposes of accessibility for persons who are print disabled. This exemption has been requested for literary works distributed electronically, including e-books, digital textbooks, and PDF articles.

Proponents argued that reproducing copies in accessible formats is a noninfringing use, and that, while improvements have been made to make literary works more accessible since the last triennial rulemaking, there are still a substantial number of works that cannot be accessed using accessibility technologies such as text-to-speech programs.

There was no opposition to renewing the 2012 exemption. Significantly, the Association of American Publishers, representing book publishers, filed supportive comments indicating that it had no objection to a renewal of the existing exemption, explaining that the market does not yet offer sufficient accessibility to literary works.

NTIA supported renewal of the current exemption, finding that the record regarding the state of accessibility of literary works is not substantially different than it was three years ago.

The Register recommended granting the exemption. According to the Register, the need to ensure that persons who are blind, visually impaired or print disabled are not impeded from accessing books in electronic formats presents a quintessential case for an exemption. The Register determined that converting e-books into accessible formats is likely a noninfringing use both as a matter of fair use and under 17 U.S.C. 121, also known as the ''Chafee Amendment,'' which allows authorized entities to create accessible versions of works exclusively for use by persons who are blind, visually impaired, or print disabled. The Register also found that TPMs are likely to have an adverse effect on noninfringing activities, as many e-book titles and literary works in electronic format (such as electronic textbooks and PDF articles) are currently unavailable in accessible formats. The Register further concluded that all five statutory factors favored the exemption. Finally, like the existing exemption, the recommended exemption allows the intended beneficiaries of section 121 to benefit from the waiver on circumvention.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

Literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies,

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels, or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

3. Proposed Classes 11 to 15: Computer Programs That Enable Devices To Connect to a Wireless Network That Offers Telecommunications and/or Information Services (''Unlocking'') [25]

Proposed Classes 11 through 15 would allow circumvention of access controls on wireless devices such as cellphones and all-purpose tablet computers to allow them to connect to the network of a different mobile wireless carrier, a process commonly known as ''unlocking.'' Wireless carriers typically lock wireless devices to their networks when they have subsidized the cost of a device at the time of purchase; carriers then recoup that

[24] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 127–37.

[25] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 138–71.

subsidy through wireless service charges paid by the purchaser.

The Register has recommended, and the Librarian has adopted, exemptions permitting unlocking of cellphones in three prior rulemakings. Based on the evidentiary record in the last triennial proceeding, the 2012 version of the exemption was limited to cellphones obtained on or before January 26, 2013. Congress enacted the Unlocking Act to reinstate the cellphone unlocking exemption that was adopted in 2010, which lacked such a limitation. In the Unlocking Act, Congress also instructed the Librarian to review any future proposal for a cellphone unlocking exemption according to the usual process in this triennial rulemaking, as well as to consider in this rulemaking whether to extend the cellphone unlocking exemption to other categories of wireless devices. As noted above, the Unlocking Act also defines, on a permanent basis, categories of persons and entities that can take advantage of any unlocking exemption.

Consistent with Congress's directive in the Unlocking Act, the Copyright Office invited proposals to continue an unlocking exemption for wireless telephone handsets and/or to extend the exemption to other categories of wireless devices. The petitions received generally asked for continuation of the current cellphone unlocking exemption, and expansion of that exemption to cover additional types of devices.

The Office grouped the petitions into five distinct classes based on the type of device at issue, as described below:

Proposed Class 11: This proposed class would allow the unlocking of wireless telephone handsets. ''Wireless telephone handsets'' includes all mobile telephones including feature phones, smart phones, and ''phablets'' that are used for two-way voice communication.

Class 11, covering cellphones, was proposed by Consumers Union, the Competitive Carriers Association (''CCA''), the Institute of Scrap Recycling Industries (''ISRI''), Pymatuning Communications (''Pymatuning''), and the Rural Wireless Association (''RWA'').

Proposed Class 12: This proposed class would allow the unlocking of all-purpose tablet computers. This class would encompass devices such as the Apple iPad, Microsoft Surface, Amazon Kindle Fire, and Samsung Galaxy Tab, but would exclude specialized devices such as dedicated e-book readers and dedicated handheld gaming devices.

Class 12, covering all-purpose tablets, was proposed by Consumers Union, CCA, ISRI, Pymatuning, and RWA. As reflected in the proposal, the petitions were limited to ''all-purpose'' tablet computers—that is, tablet computers that can run a wide variety of programs—as opposed to devices dedicated to the consumption of particular types of content such as e-book readers.

Proposed Class 13: This proposed class would allow the unlocking of mobile connectivity devices. ''Mobile connectivity devices'' are devices that allow users to connect to a mobile data network through either a direct connection or the creation of a local Wi-Fi network created by the device. The category includes mobile hotspots and removable wireless broadband modems.

Class 13, covering mobile connectivity devices, was proposed CCA and RWA.

Proposed Class 14: This proposed class would allow the unlocking of wearable wireless devices. ''Wearable wireless devices'' include all wireless devices that are designed to be worn on the body, including smart watches, fitness devices, and health monitoring devices.

Class 14, covering wearable wireless devices, was proposed by CCA and RWA.

Proposed Class 15: This proposed class would allow the unlocking of all wireless ''consumer machines,'' including smart meters, appliances, and precision-guided commercial equipment.

Class 15 was proposed by CCA, and encompassed a broad and diverse range of devices and equipment, including any ''smart'' device utilizing a data connection to connect to the internet or interact with other smart devices. CCA, however, failed to further define the kinds of ''smart'' devices the exemption would cover beyond those already encompassed by Classes 11 through 14, let alone the types of TPMs used by such devices, or the methods of circumvention. Indeed, it was not apparent from the record whether any such devices actually exist. For instance, while CCA suggested that smart power meters would be encompassed by the proposal, evidence at the public hearing (at which CCA did not participate) indicated that smart meters generally do *not* have mobile data (*i.e.,* 3G/4G) connections, rendering the concept of ''unlocking'' irrelevant to that type of device.

In general, proponents argued that unlocking was permitted under section 117 of the Copyright Act, which allows the owners of computer programs to make certain reproductions of or adaptations to those programs, and as a matter of fair use. They explained that the inability to unlock one's wireless device leads to adverse effects by impeding consumers' ability to choose their preferred wireless carriers, harming the resale value of used devices, and harming the environment by encouraging disposal rather than reuse of devices.

No party opposed Proposed Class 12 (all-purpose tablet computers) or Proposed Class 14 (wearable computing devices). Prepaid wireless carrier TracFone nominally filed comments in opposition to the cellphone unlocking exemption in Class 11, though at bottom it was not opposed to renewal of the exemption, so long as it was clear that the exemption did not permit illegitimate phone trafficking—a practice where subsidized prepaid cellphones are purchased, unlocked, and resold (often abroad) at a profit. The Alliance of Automobile Manufacturers (''Auto Alliance'') and General Motors LLC (''GM'') filed opposition comments in Class 13 solely to stress that any exemption should exclude ''mobile'' connectivity devices embedded in motor vehicles, and Class 13 proponents agreed that such a limitation would be appropriate. Auto Alliance opposed Class 15 on the ground that it is ill-defined and could inadvertently sweep in cars and trucks.

NTIA proposed adopting an exemption encompassing all used wireless devices, without enumerating the types of devices to which the exemption applies. At the same time, NTIA acknowledged that based on the record in the rulemaking, it would be appropriate to exclude one type of wireless device—vehicle-based hotspots—from the exemption.

The Register recommended adopting an unlocking exemption covering wireless telephone handsets (*i.e.,* cellphones), all-purpose tablet computers, mobile connectivity devices, and wearable wireless devices. According to the Register, the unlocking exemption is likely to facilitate noninfringing uses both under section 117 and as a matter of fair use. The Register further explained that, unlike the section 117 privilege, fair use is not limited to the owner of the computer program, and so there is no need to limit the exemption to the owner of the device software. The Register also found that, as to the devices encompassed by Classes 11 to 14, proponents had provided sufficient evidence of adverse effects flowing from the inability to unlock a device due to a TPM; in contrast, proponents of Class 15, encompassing a broad and undefined range of ''consumer machines'' and ''smart'' devices, failed to make a showing of actual adverse effects. In addition, the Register concluded that three of the five statutory factors tended

to favor the proponents, while the other two were neutral.

The recommended exemption is limited to ''used'' devices. A ''used'' device is defined as a device that has been lawfully acquired and previously activated on a wireless network. The recommended exemption permits charities and commercial enterprises (including bulk recyclers) to unlock used cellphones, while excluding illegitimate trafficking that seeks to profit from the subsidized phones sold by prepaid wireless carriers. Although some proponents called for elimination of the ''used'' requirement for cellphones and tablets—which in theory would permit unlocking of new, subsidized devices—the Register concluded that the record did not support extending the exemption in this respect as the evidence did not establish a practical ability to unlock subsidized devices that had never been connected to a carrier. Finally, the recommended exemption excludes devices embedded in motor vehicles from the exemption for mobile connectivity devices by including the condition that the devices be ''portable.''

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

(i) Computer programs that enable the following types of wireless devices to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network, and the device is a used device:

(A) Wireless telephone handsets (*i.e.,* cellphones);

(B) All-purpose tablet computers;

(C) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and

(D) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.

(ii) A device is considered ''used'' for purposes of this exemption when it has previously been lawfully acquired and activated on the wireless telecommunications network of a wireless carrier.

4. Proposed Classes 16 and 17: Jailbreaking—Smartphones and All-Purpose Mobile Computing Devices [26]

Proposed Classes 16 and 17 address an activity commonly known as ''jailbreaking,'' which is the process of gaining access to the operating system of a computing device, such as a smartphone or tablet, to install and execute software that could not otherwise be installed or run on that device, or to remove pre-installed software that could not otherwise be uninstalled. The Register has twice before recommended, and the Librarian has twice adopted, an exemption permitting jailbreaking of smartphones.

EFF filed a petition seeking a jailbreaking exemption for all ''mobile computing devices,'' including wireless telephone handsets that are capable of running a wide range of applications (*i.e.,* ''smartphones'') and tablet computers (''tablets''). EFF explained that its requested exemption is not intended to extend to devices designed primarily for the consumption of a single type of media, such as dedicated e-book readers, or to desktop or laptop computers. Maneesh Pangasa filed a separate petition seeking an exemption for tablet computers. The Copyright Office divided these proposals into two proposed classes to ensure an adequate administrative record on which to make a recommendation. Based on these petitions, the Office included the following proposed exemptions in the NPRM:

Proposed Class 16: This proposed class would permit the jailbreaking of wireless telephone handsets to allow the devices to run lawfully acquired software that is otherwise prevented from running, or to remove unwanted preinstalled software from the device.

Proposed Class 17: This proposed class would permit the jailbreaking of all-purpose mobile computing devices to allow the devices to run lawfully acquired software that is otherwise prevented from running, or to remove unwanted preinstalled software from the device. The category ''all-purpose mobile computing device'' includes all-purpose non-phone devices (such as the Apple iPod touch) and all-purpose tablets (such as the Apple iPad or the Google Nexus). The category does not include specialized devices such as e-book readers or handheld gaming devices, or laptop or desktop computers.

Relying on case law and prior determinations of the Register, proponents argued that jailbreaking of smartphones and all-purpose mobile computing devices constitutes fair use of the device software. Proponents also pointed to a series of benefits that have resulted from the existing smartphone jailbreaking exemption, such as the ability to install otherwise unsupported operating system upgrades and the rapid growth in the market for legitimate, non-manufacturer-approved apps, and argued that similar benefits would result if the exemption included all-purpose mobile computing devices.

The Business Software Alliance (''BSA'') opposed both classes. In neither case, however, did BSA dispute the noninfringing nature of jailbreaking. Instead, BSA argued that the existence of alternatives to jailbreaking, such as ''developer editions'' of devices that do not need to be jailbroken, obviate the need for an exemption. In addition, with respect to the exemption for all-purpose mobile computing devices in Class 17, BSA disputed EFF's effort to distinguish between all-purpose mobile computing devices on the one hand, and desktops and laptops on the other, arguing that the distinction is not sufficiently clear. In response, EFF offered two further criteria to define these devices: First, that they be portable, in the sense that they are ''designed to be carried or worn''; and second, that they ''come equipped with an operating system that is primarily designed for mobile use,'' such as Android, iOS, Blackberry OS or Windows Phone.

Commenters representing automobile manufacturers filed comments under Class 17 raising the concern that the class could arguably encompass computing systems that are embedded in ''mobile'' automobiles and other vehicles. EFF clarified, however, that Class 17 was not intended to include software running on vehicle electronics, but only portable devices designed to be carried or worn by a person.

NTIA favored a jailbreaking exemption for all ''mobile computing devices,'' a category which (contrary to EFF's proposal) would appear to include devices that are designed primarily for the consumption of a single type of media, including dedicated e-book readers, which are separately addressed in Proposed Class 18 below. Although NTIA asserted that the works and TPMs at issue are strikingly similar and in many cases identical, it cited no evidence to support that claim with respect to dedicated e-book readers, handheld video game consoles, or other dedicated media consumption devices.

The Register recommended continuing the existing jailbreaking exemption for smartphones, and extending it to all-purpose mobile computing devices. As in previous rulemakings, the Register concluded that jailbreaking to facilitate interoperability is likely to constitute a noninfringing fair use, and that the prohibition on circumvention is having an adverse effect on this type of use. Further, the Register concluded that three of the statutory factors (availability for use of copyrighted works, the impact on criticism, comment, news reporting, teaching, scholarship, or research, and the effect of circumvention of technological measures on the market

[26] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 172–92.

for or value of the copyrighted works) favored an exemption, while the other two were not implicated by these classes.

The Register also concluded, based on the overall record, that the category of ''all-purpose mobile computing devices'' in Class 17 has been meaningfully defined, but that certain refinements were appropriate to address concerns regarding its scope. The recommended exemption thus incorporates EFF's suggestion to specify that the devices be portable, that they be designed to run a wide variety of applications, and that they come equipped with an operating system primarily designed for mobile use. The recommended exemption thus excludes vehicle-embedded systems, devices designed primarily for consumption of a specific type of media (such as e-book readers and handheld gaming devices), and computers confined to desktop or laptop operating systems, such as Windows 8 or Mac OS. If a hybrid device can act either as a laptop or a tablet, the user will need to investigate what type of operating system it contains in order to determine whether the exemption applies.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

> Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this exemption, a ''portable all-purpose mobile computing device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for mobile use, and is intended to be carried or worn by an individual.

5. Proposed Class 20: Jailbreaking—Smart TVs [27]

In addition to their traditional functionality, many modern televisions (''TVs'') have built-in software features that can stream content over the internet, interact with other devices in the home, or run applications. These internet-enabled TVs are often referred to as ''Smart TVs.'' Smart TV firmware is often protected by TPMs that prevent owners of those TVs from installing third-party software on them. The Software Freedom Conservancy (''SFC'') proposed an exemption to permit circumvention of access controls on firmware (*i.e.,* the operating system) of such smart TVs to enable installation of third-party software.

The Copyright Office included the following proposed exemption in the NPRM:

> Proposed Class 20: This proposed class would permit the jailbreaking of computer-embedded televisions (''smart TVs''). Asserted noninfringing uses include accessing lawfully acquired media on external devices, installing user-supplied licensed applications, enabling the operating system to interoperate with local networks and external peripherals, and enabling interoperability with external devices, and improving the TV's accessibility features (*e.g.,* for hearing-impaired viewers). The TPMs at issue include firmware encryption and administrative access controls that prevent access to the TV's operating system.

According to SFC, access to the firmware would allow various noninfringing uses, including improving accessibility features (such as the size of closed captioning), enabling or expanding the TV's compatibility with peripheral hardware and external storage devices, and making changes to display features such as the aspect ratio. SFC argued that the majority of smart TV firmware incorporates the manufacturer's own proprietary applications along with free, libre and open source software (''FLOSS'') applications produced by third parties. SFC argued that, under the relevant FLOSS licenses, smart TV owners are authorized to modify the FLOSS applications and to run them without restriction. SFC also argued that fair use permits reproduction and alteration of proprietary applications to the extent necessary to permit interoperability with lawfully acquired programs.

Proposed Class 20 was opposed by Joint Creators and LG Electronics U.S.A. (''LG''), a manufacturer of smart TVs. Opponents argued that an exemption would not facilitate noninfringing uses, and was unnecessary because a laptop can be connected to TV sets to view the output of any applications and because LG smart TVs already provide all of the features that SFC claims can be added only by jailbreaking. In addition, Joint Creators raised concerns that jailbreaking would allow the installation of infringing software as well as software such as ''Popcorn Time,'' an application that facilitates access to and viewing of pirated movies.

NTIA supported the proposed exemption, on the ground that it is not materially different than the exemptions that have been granted in the past for jailbreaking of smartphones.

The Register recommended granting the proposed exemption, explaining that circumvention of access controls on smart TV firmware is likely to enable noninfringing uses of that firmware. First, it appears to be undisputed that smart TV firmware incorporates FLOSS applications, and that modification of those applications would constitute a licensed, and therefore noninfringing, use. Second, with respect to non-FLOSS proprietary software included in the firmware, the Register concluded that modifications to that firmware to enable interoperability with third-party software are likely to constitute a fair use. The Register also found that the prohibition on circumvention is adversely affecting legitimate noninfringing uses of smart TV firmware, and that the proposed alternatives to circumvention, such as connecting a laptop computer to the TV, are inadequate, because they would not allow installation of software on the smart TV to improve its functioning as a TV, such as facilitating more prominent subtitles. The Register also concluded that no evidence was submitted to illustrate opponents' claim that jailbreaking of smart TVs will make it easier to gain unauthorized access to copyrighted content, or that it would otherwise undermine smart TVs as a platform for the consumption of expressive works.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

> Computer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television.

6. Proposed Class 21: Vehicle Software—Diagnosis, Repair or Modification [28]

Modern automobiles and agricultural vehicles and machinery are equipped with systems of interconnected computers that monitor and control a variety of vehicle functions. These computers are referred to as electronic control units, or ''ECUs,'' which are protected by TPMs. EFF requested an exemption to permit circumvention of TPMs protecting ECU computer programs for the purposes of diagnosis, repair and modification of vehicles. The Intellectual Property & Technology Law Clinic of the University of Southern California Gould School of Law (''IPTC

[27] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 202–17.

[28] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 218–49.

U.S.C.'') proposed two similar exemptions for agricultural machinery specifically.

Based on these petitions, the Office included the following proposed exemption in the NPRM:

> Proposed Class 21: This proposed class would allow circumvention of TPMs protecting computer programs that control the functioning of a motorized land vehicle, including personal automobiles, commercial motor vehicles, and agricultural machinery, for purposes of lawful diagnosis and repair, or aftermarket personalization, modification, or other improvement. Under the exemption as proposed, circumvention would be allowed when undertaken by or on behalf of the lawful owner of the vehicle.

Proponents explained that circumvention of TPMs protecting copyrighted computer programs in ECUs may be necessary to make noninfringing uses of those programs to diagnose and repair automobiles and agricultural equipment, and to make modifications, such as enhancing a vehicle's suspension or installing a gear with a different radius. They assert that vehicle owners are entitled to use the computer programs in ECUs to diagnose, repair or modify vehicles as a matter of fair use, or under section 117. EFF argues that absent an exemption, vehicle owners must take their cars to authorized repair shops, or purchase expensive manufacturer-authorized tools, to diagnose and repair their vehicles. Similarly, IPTC U.S.C. explained that TPMs restricting access to computer programs that run agricultural vehicles and machinery place the livelihoods of farmers and other business owners at risk, because vehicle owners must sometimes wait significant periods of time before their disabled vehicles can be repaired by an authorized technician.

The proposed exemption was opposed by the Association of Equipment Manufacturers, Association of Global Automakers (''Global Automakers''), Auto Alliance, Eaton Corporation, GM, John Deere, and Motor & Equipment Manufacturers Association (''MEMA''). In general, opponents argued that an exemption would not facilitate noninfringing uses, and was unnecessary in any event because vehicle owners have alternative options, such as manufacturer-authorized repair shops and tools. They also asserted that the proposal presented serious public health, safety and environmental concerns. For example, users might circumvent in order to avoid restrictions on vehicle emissions imposed by federal and state law.

In light of the commenters' observations, the Copyright Office notified DOT and EPA of the pendency of the rulemaking. DOT and EPA, as well as California ARB, responded with varying degrees of concern about the potential impact of an exemption. EPA opposed any exemption, while DOT and California ARB expressed significant reservations. The agencies' concerns were focused on potential adverse effects on safety and the environment. For example, EPA explained that vehicle modifications are often performed to increase engine power or boost fuel economy, but that these modifications increase vehicle emissions and thus violate the Clean Air Act.

In contrast to these other agencies, NTIA fully supported adoption of the proposed exemption. NTIA believed that an exemption was necessary to allow consumers to continue to engage in the longstanding practice of working on their own vehicles, and that the non-copyright concerns raised by opponents and other agencies could be addressed by those agencies in the exercise of their respective regulatory authorities. NTIA acknowledged, however, that a delay in implementation—as recommended by the Register and discussed below—might nonetheless be appropriate to permit other agencies to consider and prepare for the new rule, and urged that any such delay be as short as practicable.

Based on the record, the Register recommended granting an exemption. The Register concluded that reproducing and altering the computer programs on ECUs for purposes of facilitating diagnosis, repair and modification of vehicles may constitute a noninfringing activity as a matter of fair use and/or under the exception set forth in section 117 of the Copyright Act, which permits the owner of a copy of a computer program to make certain copies and adaptations of the program. The Register also concluded that owners of vehicles and agricultural machinery are adversely impacted as a result of TPMs that protect the copyrighted computer programs on the ECUs that control the functioning of their vehicles. The Register further found that while two of the statutory factors weighed in favor of the exemption (availability for use of copyrighted works and impact on criticism, comment, news reporting, teaching, scholarship or research), and two of the factors were neutral (availability for use for nonprofit archival, preservation and educational purposes and the effect on the market for or value of copyrighted works), the fifth factor—under which commenting parties and federal agencies raised serious safety and environmental concerns—tended to weigh against an exemption.

Overall, the Register concluded that while from a copyright perspective proponents had made the case for an exemption, based on the record, the exemption needed to be carefully tailored to address a number of concerns. Accordingly, the recommended exemption excludes computer programs in ECUs that are chiefly designed to operate vehicle entertainment and telematics systems due to insufficient evidence demonstrating a need to access such ECUs, and out of concern that such circumvention might enable unauthorized access to creative or proprietary content. The exemption also excludes circumvention ''on behalf of'' vehicle owners, as a broader exception allowing third parties to engage in circumvention activities on behalf of others is in tension with the anti-trafficking provisions of section 1201(a)(2) and (b). Moreover, by passing the Unlocking Act—which amended section 1201 to allow unlocking of cellphones and other devices to be carried out by third parties ''at the direction of'' device owners—Congress indicated its view that extending the reach of an exemption to cover third-party actors requires a legislative amendment. The exemption also expressly excludes acts of circumvention that would violate any other law, including regulations promulgated by DOT or EPA. Finally, in light of the significant concerns raised by DOT and EPA, the recommended exemption will become operative twelve months from the effective date of the new regulation to provide these and other potentially interested agencies an opportunity to consider and prepare for the lifting of the DMCA prohibition. Acknowledging the views of the NTIA, the Register determined that a twelve-month delay was the shortest period that would reasonably permit other agencies to consider appropriate action.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

> Computer programs that are contained in and control the functioning of a motorized land vehicle such as a personal automobile, commercial motor vehicle or mechanized agricultural vehicle, except for computer programs primarily designed for the control of telematics or entertainment systems for such vehicle, when circumvention is a necessary step undertaken by the authorized owner of the vehicle to allow the diagnosis, repair or lawful modification of a vehicle function; and where such circumvention does not constitute a violation of applicable law, including without limitation regulations promulgated by the Department of

Transportation or the Environmental Protection Agency; and provided, however, that such circumvention is initiated no earlier than 12 months after the effective date of this regulation.

7. Proposed Classes To Permit Research of Software Flaws, Proposed Class 25: Software—Security Research; Proposed Class 22: Vehicle Software—Security and Safety Research; Proposed Class 27A: Medical Device Software—Security and Safety Research [29]

The Office received a number of petitions for proposed exemptions to permit circumvention of TPMs for purposes of conducting good-faith testing for and the identification, disclosure and correction of malfunctions, security flaws and vulnerabilities in computer programs. The proponents of these security exemptions observed as a general matter that computer programs are pervasive in modern machines and devices, including vehicles, home appliances and medical devices, and that independent security research is necessary to uncover flaws in those computer programs. The Copyright Office grouped the security-related petitions into three proposed classes. First, the Office received two submissions from academic researchers seeking an exemption to permit good-faith research into malfunctions, security flaws or vulnerabilities in computer programs installed on all types of systems and devices. The NPRM described the proposed class as follows:

Proposed Class 25: This proposed class would allow researchers to circumvent access controls in relation to computer programs, databases, and devices for purposes of good-faith testing, identifying, disclosing, and fixing of malfunctions, security flaws, or vulnerabilities.

Second, EFF filed a petition seeking an exemption to allow the circumvention of TPMs on computer programs that are embedded in motorized land vehicles for purposes of researching the security or safety of that vehicle. The NPRM described the proposed class as follows:

Proposed Class 22: This proposed class would allow circumvention of TPMs protecting computer programs that control the functioning of a motorized land vehicle for the purpose of researching the security or safety of such vehicles. Under the exemption as proposed, circumvention would be allowed when undertaken by or on behalf of the lawful owner of the vehicle.

Third, the Medical Device Research Coalition (''MDRC''), a group of patients and researchers, filed a petition seeking an exemption to allow the circumvention of TPMs on computer programs on implanted medical devices, such as pacemakers, implantable cardioverter defibrillators, insulin pumps, and continuous glucose monitors, and their corresponding personal monitoring systems. MDRC's petition covered two proposed uses—allowing research into software flaws that adversely affect the safety, security and efficacy of medical devices, and allowing a patient to access the information generated by his or her own device. The Office originally categorized the petition into a single class. The NPRM thus described the class as follows:

Proposed Class 27: This proposed class would allow circumvention of TPMs protecting computer programs in medical devices designed for attachment to or implantation in patients and in their corresponding monitoring devices, as well as the outputs generated through those programs. As proposed, the exemption would be limited to cases where circumvention is at the direction of a patient seeking access to information generated by his or her own device, or at the direction of those conducting research into the safety, security, and effectiveness of such devices. The proposal would cover devices such as pacemakers, implantable cardioverter defibrillators, insulin pumps, and continuous glucose monitors.

Based on the record as it developed in the course of the proceeding, the Register came to the conclusion that Proposed Class 27 should be divided into Proposed Class 27A, concerning security research on medical devices, and Proposed Class 27B, concerning access to patient data generated by medical devices. Class 27A is addressed with the other security research classes, while 27B is separately discussed below.

Proponents maintained that the security of software and the devices that execute software is of critical importance because security flaws pose potentially serious threats, including physical injury and death of individuals, property damage, and financial harm. Proponents argued that security research is noninfringing as a matter of fair use and, in the case of vehicle security research, under the exceptions set forth in section 117 as well. They further asserted that the permanent statutory exemptions to section 1201(a)(1)'s prohibition that are directed to reverse engineering (section 1201(f)), encryption research (section 1201(g)), and security testing (section 1201(j)) are inadequate for their purposes, because these provisions do not provide sufficient assurance that the activities in which the researchers seek to engage will be considered exempt.

The Office received comments in opposition to these proposed classes from a wide range of companies and organizations representing copyright owners. The general software security research exemption in Class 25 was opposed by AdvaMed, Auto Alliance, BSA, GM, Intellectual Property Owners Association (''IPO''), LifeScience Alley, Medical Device Innovation Safety and Security Consortium, and Software Information Industry Association. The vehicle software security research exemption in Class 22 was opposed by Global Automakers, Auto Alliance, GM, John Deere, and MEMA. The medical device software security exemption in Class 27A was opposed by AdvaMed, IPO, Jay Schulman, LifeScience Alley, and National Association of Manufacturers (''NAM''). In general, opponents argued that proponents had failed to establish that security research activities encompassed by the exemption are noninfringing, and that, in any event, an exemption was unnecessary both because of the permanent exemptions in sections 1201(f), 1201(g), and 1201(j), and because manufacturers frequently authorize independent security research. Opponents also argued that any exemption for software security research should also include an express disclosure requirement, so that the software developer or product manufacturer has sufficient time to correct any flaw before its existence becomes more widely known and thus more susceptible to exploitation by malicious actors. Relatedly, opponents asserted that the proposal presented serious public health and safety concerns. For example, opponents claimed that information obtained by engaging in security research could be used by bad actors to hack into highly regulated machines and devices, including medical devices and vehicles.

In light of commenters' observations, the Copyright Office notified DOT, EPA and FDA of the pendency of the rulemaking. All three agencies responded and expressed significant reservations. The agencies voiced concerns about the potential effects on public health and safety; for example, DOT expressed concern that independent security researchers may not fully appreciate the potential ramifications of their acts of circumvention on automobile safety or the logistical limitations affecting potential remedial actions.

[29] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 250–320.

By contrast, NTIA fully supported adoption of a broad exemption for all computer programs, regardless of the device on which they are run, so that good-faith security researchers can engage in socially beneficial work. NTIA believed that the concerns of other agencies could adequately be addressed by stating explicitly in the exemption that it does not obviate compliance with other applicable laws. NTIA nonetheless acknowledged the possibility that a delay in implementation—as recommended by the Register and discussed below—could be appropriate to permit other agencies to consider and prepare for the new rule.

The Register found that while the Class 25 proposal to allow research on computer programs generally was very broad (and potentially swallowed the proposals in Class 22 and Class 27A), the record focused primarily on consumer-facing products rather than large-scale industrial or government systems such as power or transit systems. The record also included specific evidence concerning motor vehicles, implanted medical devices such as pacemakers and glucose monitors, and electronic voting machines.

Based on this record, the Register recommended adopting an exemption to enable good-faith security research on computer programs within devices or machines primarily designed for use by individual consumers (including voting machines), motorized land vehicles, and implanted medical devices and their corresponding monitoring systems. At the same time, the Register concluded that the record did not support the open-ended exemption urged by Class 25 proponents, encompassing all computer programs on all systems and devices, including highly sensitive systems such as nuclear power plants and air traffic control systems, and that the exemption should be limited to the consumer-oriented uses that were the focus of proponents' submissions.

The Register concluded that good-faith security research into computer programs used to operate such devices and machines is likely a noninfringing fair use of those programs or, in the case of vehicle software, may be a noninfringing use under section 117. The Register also concluded that the permanent exemptions in sections 1201(f), 1201(g), and 1201(j) are inadequate to accommodate the proposed research activities due to various limitations and conditions contained in those provisions. Further, with respect to computer programs used to operate the types of devices and machines encompassed by the recommended exemption, the Register additionally found that legitimate security research has been hindered by TPMs that limit access to those programs.

The Register also noted that different parts of the Administration appear to hold divergent views on issues surrounding security research and the wisdom of granting an exemption for this purpose, and that the exemption could cover any number of highly regulated products. Accordingly, to give other parts of the government sufficient opportunity to respond, the Register recommended that, as a general matter, the exemption should not go into effect until twelve months after the effective date of the new regulation (as noted above, the Register found that twelve months was the shortest period that would reasonably permit other agencies to respond). The Register, however, recommended immediate implementation of the exemption for voting machines, on the ground that there was no public safety issue or other proffered justification for delay of this aspect of the exemption.

The Register also noted the specific concern expressed by other agencies that acts of security research must not put members of the public at risk. The recommended exemption thus provides that security research must be conducted in a controlled setting designed to avoid harm to individuals or the public. In the case of medical devices specifically, the recommended exemption incorporates FDA's suggestion to exclude research on medical devices that are being used, or could be used, by patients.

As explained above, a significant issue with respect to the security exemptions involves the proper disclosure of security research findings, as the interests of the manufacturer and the public may both be affected by the nature and timing of disclosure of software flaws. Indeed, Congress included disclosure to the system developer as one of the factors to be considered in determining a person's eligibility for the security testing exemption in section 1201(j). Although the Register expressed support for responsible disclosure of security flaws, she acknowledged the difficulty of attempting to define disclosure standards in the context of this rulemaking, as opinions seem sharply divided on this point. Accordingly, rather than incorporating an express disclosure rule, the recommended exemption draws upon what the Register perceives to be the basic intent of section 1201(j) by specifying that the information derived from the research activity be used primarily to promote the security or safety of the devices containing the computer programs on which the research is conducted, or of those who use those devices.

The Register noted that in the interest of adhering to Congress's basic purpose in section 1201(j), where appropriate, the recommended exemption tracks Congress's language rather than alternative formulations suggested by proponents, including by expressly excluding acts that violate any other law, such as the Computer Fraud and Abuse Act of 1986.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code; and provided, however, that, except as to voting machines, such circumvention is initiated no earlier than 12 months after the effective date of this regulation, and the device or machine is one of the following:

(A) A device or machine primarily designed for use by individual consumers (including voting machines);

(B) A motorized land vehicle; or

(C) A medical device designed for whole or partial implantation in patients or a corresponding personal monitoring system, that is not and will not be used by patients or for patient care.

(ii) For purposes of this exemption, ''good-faith security research'' means accessing a computer program solely for purposes of good-faith testing, investigation and/or correction of a security flaw or vulnerability, where such activity is carried out in a controlled environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

8. Proposed Class 23: Abandoned Software—Video Games Requiring Server Communication [30]

Many modern video games—which may be played on a personal computer or a dedicated gaming console—require a network connection to a remote server operated by the game's developer to enable core functionalities. Before some games can be played at all, including in

[30] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 321–53.

single-player mode, the game must connect to an ''authentication server'' to verify that the game is a legitimate copy. Other games require a connection to a ''matchmaking server'' to enable users to play the game with other people over the internet in multiplayer mode. In the case of a game that relies on an authentication server, the game may be rendered entirely unplayable if the server connection is lost. When a matchmaking server is taken offline, the game may still be playable, though with online multiplayer play disabled.

EFF and Kendra Albert, a student at Harvard Law School, jointly filed a petition seeking an exemption to enable those who have lawfully acquired copies of video games to access and play those games when authentication or matchmaking servers have been permanently taken offline. As the record developed, it became evident that the proposal focused on two types of use: (1) People who wish to continue to play physical or downloaded copies of video games they have lawfully acquired (referred to in the Recommendation as ''gamers''); and (2) those who seek to preserve individual video games and make them available for research and study (referred to in the Recommendation as ''preservationists'').

The Copyright Office set forth the following proposed exemption in the NPRM:

Proposed Class 23: This proposed class would allow circumvention of TPMs on lawfully acquired video games consisting of communication with a developer-operated server for the purpose of either authentication or to enable multiplayer matchmaking, where developer support for those server communications has ended. This exception would not apply to video games whose audiovisual content is primarily stored on the developer's server, such as massive multiplayer online role-playing games.

Proponents of Class 23 argued that uses to enable continued gameplay or multiplayer play constitute fair use, but that the prohibition on circumvention prevents owners from restoring access to games they have lawfully acquired. They also stressed that the inability to restore access has adverse effects on efforts to preserve video games and make them available for research and study.

The proposed class was opposed by ESA and Joint Creators. They argued that the proposed exemption was too broad, would not facilitate any noninfringing uses, and could adversely impact the market for video games. ESA expressed particular concern about the potential for piracy as a result of circumvention activities, explaining that if the exemption were to permit circumvention of TPMs on video game consoles, those consoles could be used to play pirated video games. Opponents also urged that petitioners had failed to demonstrate cognizable adverse effects, arguing, for example, that the vast majority of games can continue to be played in single-player mode when server support has ended, and that there are other alternative means of playing games in multiplayer mode without a matchmaking server, including by using a local area network. ESA also argued that, at the point of sale, consumers receive ample notice that server support may be discontinued.

NTIA supported adoption of the proposed exemption for continued gameplay and for preservation uses, both for single-player and multiplayer play. NTIA argued that gamers should be permitted to restore access to a work that they had originally been allowed to use. In addition, according to NTIA, consumers receive inconsistent notice at best that developers may discontinue support for multiplayer use, and LAN-enabled multiplayer play is an inadequate substitute to play over the internet.

Based on a review of the evidentiary record, the Register recommended an exemption to allow continued gameplay and preservation activities when developer server support for a video game has ended, though one more circumscribed than that proposed. With respect to gamers, the Register concluded that the record supported granting an exemption for video games that require communication with an authentication server to allow gameplay when the requisite server is taken offline. The Register explained that the inability to circumvent the TPM would preclude all gameplay, a significant adverse effect, and that circumvention to restore access would qualify as a noninfringing fair use. At the same time, the Register determined that proponents had failed to provide persuasive support for an exemption for online multiplayer play, in large part because it is not clear on the current record how the provision of circumvention tools to multiple users to facilitate an alternative matchmaking service could be accomplished without running afoul of the anti-trafficking provision in section 1201(a)(2). The Register also confirmed that the exemption for gamers should not extend to jailbreaking of console software because such jailbreaking is strongly associated with video game piracy.

With respect to preservation uses, looking to certain aspects of section 108 of the Copyright Act for guidance, the Register found that the record supported an exemption for libraries and archives, as well as for museums, to allow circumvention of TPMs so that video games can be preserved in playable condition when authentication servers are discontinued. In accordance with section 108, such institutions must be open to the public and/or to unaffiliated researchers, and the activities at issue must not be for commercial purposes. As with gamers generally, the recommended exemption for preservationists does not extend to circumvention to enable online multiplayer play, which is an activity that would extend beyond the walls of the preserving institution. But because the risk of piracy is much lower in a preservationist setting than with respect to gamers at large, the Register recommended that preservationists have the ability to circumvent TPMs controlling access to video game console software when necessary to maintain a console game in playable form.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable local gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives or museum.

(ii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives or museum to engage in the preservation activities described in paragraph (i)(B).

(iii) For purposes of the exemptions in paragraphs (i) and (ii), the following definitions shall apply:

(A) ''Complete games'' means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) ''Ceased to provide access'' means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended

and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(C) ''Local gameplay'' means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(D) A library, archives or museum is considered ''eligible'' when the collections of the library, archives or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives or museum.

9. Proposed Class 26: Software—3D Printers [31]

3D printing—also known as ''additive'' manufacturing—is a technology that translates digital files into physical objects by adding successive layers of material. Some 3D printer manufacturers use TPMs to limit the types of material—or ''feedstock''—that can be used in their 3D printers to manufacturer-approved feedstock.

Proponent Public Knowledge sought an exemption to permit the circumvention of access controls on computer programs on 3D printers with chip-based verification systems to enable the use of non-manufacturer-approved feedstock in such printers. The requested exemption would encompass both the modifications necessary to make a 3D printer accept alternative feedstock, and potentially further modifications to allow the use of feedstock consisting of material that is different from what a 3D printer has been designed to use (*e.g.,* metal instead of plastic).

The Copyright Office set forth the following proposed exemption in the NPRM:

Proposed Class 26: This proposed class would allow circumvention of TPMs on firmware or software in 3D printers to allow use of non-manufacturer-approved feedstock in the printer.

According to Public Knowledge, non-manufacturer-approved feedstock is often much less expensive than that provided by the manufacturer. In addition, use of feedstock composed of a different material may require modification of the printer's operating system software, for example, to change preset variables such as the rate at which the heated feedstock is extruded to create the object or the temperature of the extrusion nozzle. According to Public Knowledge, the reproductions and adaptations necessary to engage in these uses are noninfringing under either the fair use doctrine or section 117. Public Knowledge asserts that absent an exemption, 3D printer owners will be forced to pay more for feedstock, and innovation in the 3D printing space will be adversely affected.

This proposed class was opposed by Stratasys, Inc. (''Stratasys''), a 3D printer manufacturer. Among other things, Stratasys contended that the proposed uses do not qualify as noninfringing under section 117 because 3D printer owners license rather than own the software that is installed on the 3D printer. Stratasys also argued that proponents had failed adequately to demonstrate cognizable adverse effects. Stratasys explained that 3D printers are used to produce medical implants, aerospace parts, and other goods that are subject to safety or regulatory guidelines, and expressed concern that an exemption could permit use of inferior materials in such applications. Notably, this concern was reinforced by FDA, which, in a letter to the Office, worried that an exemption for this class might create unintended public health and safety risks in relation to medical devices. Stratasys also expressed the concern that an exemption could be used to access proprietary design software, design files, or data.

NTIA favored granting the proposed exemption, on the ground that it would benefit consumers and fuel innovation by reducing costs of feedstock and by allowing the use of new types of feedstock. Although NTIA acknowledged concerns that 3D-printed parts might use inferior materials, it concluded that the exemption should not attempt to address concerns about quality control.

The Register recommended granting an exemption for 3D printers with chip-based verification systems, explaining that the proposed uses of operating system software to permit the use of alternative feedstock are likely noninfringing as a matter of fair use or under section 117, and that the prohibition on circumvention appears to be adversely affecting the proposed uses. At the same time, the Register observed that proponents' proposal—and the evidence offered in support—was focused largely on nonindustrial uses of printers rather than the sorts of uses that could present the types of safety and regulatory concerns highlighted by Stratasys and FDA. In light of the record, and to address the safety and regulatory issues, the recommended exemption excludes circumvention of TPMs on 3D printers that are used to print objects that are subject to legal or regulatory oversight. The recommended exemption also excludes circumvention for the purpose of accessing design software, design files or proprietary data.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

Computer programs that operate 3D printers that employ microchip-reliant technological measures to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock and not for the purpose of accessing design software, design files or proprietary data; provided, however, that the exemption shall not extend to any computer program on a 3D printer that produces goods or materials for use in commerce the physical production of which is subject to legal or regulatory oversight or a related certification process, or where the circumvention is otherwise unlawful.

10. Proposed Class 27B: Networked Medical Devices—Patient Data [32]

Many modern implanted medical devices, such as pacemakers, implantable cardioverter defibrillators, insulin pumps and continuous glucose monitors, measure and record data about physiological developments taking place within the body, and communicate that data wirelessly to a corresponding personal monitoring system. Some personal monitoring systems, in turn, transmit data to a hospital or monitoring company, and ultimately to the patient's physician. Increasingly, these transmissions of data are protected by TPMs, including encryption schemes. MDRC requested an exemption that would allow a patient, or persons acting on behalf of the patient, to circumvent TPMs on these transmissions so that the patient is able to access the data generated by his or her own medical device and any corresponding personal monitoring system, without the need to visit a hospital or doctor's office.

As explained above, MDRC's petition also encompassed security research into medical device software. The Office accordingly set forth the following class in the NPRM:

Proposed Class 27: The proposed class would allow circumvention of TPMs protecting computer programs in medical devices designed for attachment to or implantation in patients and in their corresponding monitoring devices, as well as the outputs generated through those programs. As proposed, the exemption would be limited to cases where circumvention is at the direction of a patient seeking access to information generated by his or her own

[31] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 356–77.

[32] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 378–403.

device, or at the direction of those conducting research into the safety, security, and effectiveness of such devices. The proposal would cover devices such as pacemakers, implantable cardioverter defibrillators, insulin pumps, and continuous glucose monitors.

As also noted above, the Register concluded that Proposed Class 27 should be divided into Proposed Class 27A, concerning security research, and Proposed Class 27B, concerning patient data, to allow the two types of uses to be separately analyzed. Class 27A is addressed with the other security research-related classes above. A discussion of Class 27B follows.

MDRC explained that an exemption to circumvent TPMs protecting medical device data would give patients real-time access to their own health data, allowing them, for example, to immediately detect major health risks or facilitate highly personalized treatment. As framed by MDRC, the exemption would provide access only to TPM-protected data outputs of medical devices, not to computer programs contained within medical devices or their corresponding monitoring systems. Although MDRC explained that such data is uncopyrightable to the extent it merely consists of physiological facts, such as a patient's blood glucose level, it expressed concern that the data outputs of some devices may constitute copyrightable compilations. MDRC asserted that the proposed use of such compilations would be a fair use, and urged the Office to adopt an exemption covering such circumstances. MDRC explained that the prohibition on circumvention adversely affects patients' ability to monitor their own health in real time, and that those adverse effects are likely to increase because FDA has encouraged manufacturers to impose TPMs on data outputs. Responding to concerns about the impact of such an exemption on the battery life of implanted devices, MDRC explained that the exemption could be limited to passive monitoring of data that is already being transmitted by the medical device or monitoring system.

The Office received comments in opposition to the proposed exemption from AdvaMed, IPO, LifeScience Alley, and NAM. AdvaMed agreed with MDRC that in certain circumstances, the selection and arrangement of data generated by a medical device might be copyrightable as a compilation. Opponents, however, provided little argument to counter MDRC's claim that patient access to such medical data constitutes a noninfringing fair use. Indeed, they conceded that patients have an ''inherent right'' to access their own medical data, but argued that this right is satisfied by obtaining data via authorized means, such as through a patient's health care provider. Opponents also relied heavily on the claim that the exemption would create health and safety concerns. For example, opponents contended that requesting data from implanted devices at an abnormally high rate could reduce the battery life of such devices. Opponents suggested that the Copyright Office allow an opportunity for FDA to provide input on the proposed exemption.

In light of opponents' comments, the Office advised FDA of the pendency of this proceeding. In a responsive letter to the Office, FDA expressed concern about facilitating access to data that includes patient health information or personally identifiable information, noting that the use of such data is subject to government regulation. FDA recommended that any exemption indicate that it was not intended to override the regulations of other federal agencies.

NTIA supported the proposed exemption, explaining among other things that the exemption would allow patients to see and react to data collected by their devices in real time. NTIA also concluded that the exemption is unlikely to adversely affect the operation of the medical device itself, based on MDRC's assertion that data would be passively intercepted as it is wirelessly transmitted from the device or monitoring system.

The Register recommended granting the proposed exemption. The Register observed that in many cases, data outputs generated by devices would likely be uncopyrightable, and that in such cases, section 1201(a)(1)—which is limited to works protected under title 17—would not apply. The Register noted, however, that some data outputs could qualify for protection as literary works if they reflect a sufficiently original selection and presentation of data, and that opponents themselves agreed that such outputs could be subject to copyright. Accordingly, the Register concluded that an exemption would be appropriate to enable patients' access to their own medical data as embodied in protectable data compilations generated by implanted medical devices and corresponding personal monitoring systems. The Register concluded that accessing one's own medical data is likely to be a fair and noninfringing use, and that TPMs on that data are likely to have an adverse impact on such access, especially as TPMs become more prevalent in response to FDA guidance. In addition, the Register concluded that the statutory factors favor an exemption.

In light of concerns about the effect of circumvention on the battery life of implanted medical devices, the Register recommended that the exemption reflect the approach suggested by MDRC, so it is limited to passively accessing data that is already being generated or transmitted by the device. Further, as suggested by FDA, the recommended exemption expressly provides that any actions taken under the exemption must be compliant with all applicable laws and regulations. The recommended exemption does not permit circumvention ''at the direction of a patient,'' as a broader exception allowing third parties to engage in circumvention activities on behalf of others could implicate the anti-trafficking provisions of section 1201(a)(2) and (b). Unlike the recommended exemptions for security research and vehicle diagnosis, repair and modification, the Register recommended that the exemption for access to patient data be effective without delay because the passive monitoring of data transmissions did not appear to present any immediate safety or health concerns.

Accordingly, based on the Register's recommendation, the Librarian adopts the following exemption:

Literary works consisting of compilations of data generated by medical devices that are wholly or partially implanted in the body or by their corresponding personal monitoring systems, where such circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by his or her own device or monitoring system and does not constitute a violation of applicable law, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986 or regulations of the Food and Drug Administration, and is accomplished through the passive monitoring of wireless transmissions that are already being produced by such device or monitoring system.

B. Classes Considered but Not Recommended

Based upon the record in this proceeding, the Register of Copyrights recommends that the Librarian determine that the following classes of works shall not be exempt from the prohibition against circumvention of technological measures set forth in section 1201(a)(1):

1. Proposed Classes 8 and 10: Audiovisual Works and Literary Works Distributed Electronically—Space-Shifting and Format-Shifting [33]

Proposed Classes 8 and 10 would have permitted circumvention of technological measures protecting motion pictures, e-books, and other audiovisual or literary works to allow users to view the materials on alternate devices for personal use or to create back-up copies. Broadly speaking, this activity is referred to as ''space-shifting'' and, in some cases, ''format-shifting.''

Public Knowledge requested an exemption to engage broadly in noncommercial space-shifting of motion pictures distributed on DVDs, Blu-ray discs, and downloaded files. Alpheus Madsen requested an exemption to allow circumvention of access controls on DVDs specifically in order to play the DVDs on the Linux operating system. These overlapping exemptions were combined into the following class:

> Proposed Class 8: This proposed class would allow circumvention of access controls on lawfully made and acquired audiovisual works for the purpose of noncommercial space-shifting or format-shifting. This exemption has been requested for audiovisual material made available on DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Christopher Meadows, in turn, proposed an exemption to engage in noncommercial space- or format-shifting of e-books, to allow consumers to view TPM-protected e-books on alternate viewing platforms and to create back-up copies. The proposed exemption was described as follows:

> Proposed Class 10: This proposed class would allow circumvention of access controls on lawfully made and acquired literary works distributed electronically for the purpose of noncommercial space-shifting or format-shifting. This exemption has been requested for literary works distributed electronically [as] e-books.

For both classes, proponents argued that space- and format-shifting for personal, noncommercial uses are fair uses. In the past four rulemakings, the Register has declined to recommend, and the Librarian has declined to adopt, an exemption for such uses because the proponents had failed to establish a legal or factual record sufficient to establish that the space- or format-shifting of audiovisual works, e-books, and other copyrighted works constitutes a noninfringing use. In this rulemaking, proponents argued that reconsideration of that position was warranted in light of a recent district court decision, *Fox Broadcasting Co.* v. *Dish Network LLC,*[34] as well as certain statements from legislative history of certain aspects of the Copyright Act, including a discussion of how the creation of a limited copyright in sound recordings might impact home audio recording.

Opponents urged that noncommercial space- and format-shifting are not established fair uses under the law. They further argued that, in any event, an exemption is unwarranted in light of the continued growth of licensed digital distribution services that provide meaningful alternatives to circumvention, including digital rights locker services such as UltraViolet and Disney Movies Anywhere and disc-to-digital services such as VUDU and Flixter that allow consumers to convert previously purchased DVDs or Blu-ray discs into high-quality digital files. According to opponents, an exemption that allowed broad-based space- or format-shifting would undermine not only the existing markets for DVDs and Blu-ray discs but also these emerging online distribution models.

NTIA, as it has in the past, supported what it termed a ''narrowed version'' of an exemption to allow circumvention when the work is not accompanied by an additional copy of the work in an alternate digital format. In NTIA's view, the exemption is an issue of consumer protection, although NTIA acknowledged the broader debate about the merits and legality of noncommercial space-shifting.

The Register recommended against the adoption of a proposed exemption, on the ground that the law of fair use, as it stands today, does not sanction broad-based space-shifting or format-shifting. The Register rejected proponents' attempt to rely on the *Dish Network* case, explaining that the uses at issue there were much more circumscribed than the uses proposed for this exemption. In particular, the service at issue in *Dish Network* included many safeguards to prevent unfettered use of the relevant content, including limitations on the length of time content would be available on the device to which a work is transferred. Accordingly, the Register concluded that the case was both factually and legally distinguishable. On the other hand, the recent case of *Fox News Network, LLC* v. *TVEyes Inc.,*[35] reaffirmed judicial reluctance to embrace a general space-shifting privilege.

At the same time, the Register recognized the consumer appeal of the proposals, and marketplace efforts to meet consumer demand for accessing movies and books in a wide variety of formats. According to the Register, the policy judgments surrounding the creation of a novel exception for space- or format-shifting of copyrighted works are complex and thus best left to Congress or the courts.

2. Proposed Class 18: Jailbreaking—Dedicated E-Book Readers [36]

This class would have allowed circumvention of technological measures protecting dedicated e-book readers, such as Amazon's Kindle Paperwhite, to run lawfully acquired third-party applications or software on such devices. Maneesh Pangasa filed a petition seeking this exemption, and the NPRM described the class as follows:

> Proposed Class 18: This proposed class would permit the jailbreaking of dedicated e-book readers to allow those devices to run lawfully acquired software that is otherwise prevented from running.

Pangasa, however, failed to submit further written comments or evidentiary material in support of the petition and did not participate in the public hearings. The written comments that were received in connection with this class were abbreviated and did not offer specific factual information or legal argument in support of the exemption. At the public hearing, proponent Jay Freeman briefly mentioned that people have jailbroken e-book readers to install screen savers or achieve other functionality, but no further evidence was presented in relation to this class. There were no opposition comments filed.

Although, as part of its discussion of the jailbreaking exemptions for smartphones and all-purpose mobile computing devices, NTIA expressed support for a jailbreaking exemption for dedicated e-book readers, NTIA did not point to anything specific in the record to support the requested exemption.

In light of the insufficiency of factual or legal support for the proposed exemption, the Register declined to recommend it.

[33] The Register's analysis and conclusions for these classes, including citations to the record and relevant legal authority, can be found in the Recommendation at 107–26.

[34] No. CV 12–4529 DMG (SHx), 2015 WL 1137593, at *30–31 (C.D. Cal. Jan. 20, 2015).

[35] No. 13 Civ. 5315 (AKH), 2015 WL 5025274 (S.D.N.Y. Aug. 25, 2015).

[36] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 193–94.

3. Proposed Class 19: Jailbreaking—Video Game Consoles [37]

Maneesh Pangasa filed a petition proposing an exemption to permit jailbreaking of home video game consoles for an assortment of asserted noninfringing uses, including installing alternative operating systems. The Librarian rejected a similar exemption in 2012 because of substantial concerns about video game piracy. The Copyright Office set forth the following proposal in the NPRM:

> Proposed Class 19: This proposed class would permit the jailbreaking of home video game consoles. Asserted noninfringing uses include installing alternative operating systems, running lawfully acquired applications, preventing the reporting of personal usage information to the manufacturer, and removing region locks. The requested exemption would apply both to older and currently marketed game consoles.

Pangasa failed to file supporting comments or participate in the public hearings, and the brief written comments filed by other parties provided scant support for the exemption. The limited amount of factual support offered in written comments—concerning academic research projects and ''homebrew'' video games—largely mirrored factual claims that were not persuasive in the 2012 proceeding. At the public hearing, the representative of commenting party iFixit provided some additional information regarding certain types of video game console repairs for which jailbreaking might be useful. At the same time, however, he acknowledged that the referenced repairs could be undertaken without circumvention.

Class 19 was opposed by ESA and Joint Creators. As in 2012, opponents provided substantial evidence that console jailbreaking is closely tied to video game piracy. In response to iFixit's concerns about console repair, ESA observed that all major console manufacturers offer repair services for consoles still under warranty at no charge, and for out-of-warranty consoles for prices ranging from $99 to $149. iFixit agreed with this assessment.

NTIA supported an exemption limited to repair of malfunctioning hardware for systems that are obsolete or no longer covered by manufacturer warranty, on the ground that to use an authorized repair service, the owner must send the console to the manufacturer and pay a ''substantial'' fee. At the same time, NTIA concluded that the record did not support a broader exemption, as the record is ''significantly less robust and detailed than it was in the last rulemaking.''

The Register concluded that the record in this rulemaking did not provide a basis for departing from her 2012 recommendation that an exemption for video game console jailbreaking should be denied. According to the Register, the record was not materially different from that considered in 2012, and included evidence demonstrating that jailbreaking of video game consoles continues to be closely associated with video game piracy, thus undermining the value of console software as a secure distribution platform. The Register also concluded that the need to engage in console repair did not provide a basis for an exemption in light of the availability of authorized repair services and the ability of proponents and others to perform repairs without the need to circumvent.

4. Proposed Class 24: Abandoned Software—Music Recording Software [38]

This proposed exemption would have allowed circumvention of a dongle-like access control that is allegedly no longer supported by the developer or copyright owner and protects a specific type of music recording software, Ensoniq PARIS. Three individuals proposed this exemption, Richard Kelley, James McCloskey, and Michael Yanoska, and the Copyright Office set forth the following proposal in the NPRM:

> Proposed Class 24: This proposed class would allow circumvention of access controls consisting of the PACE content protection system, which restricts access to the full functionality of lawfully acquired Ensoniq PARIS music recording software.

No evidence or argument to support this exemption was submitted after the initial petition phase of the proceeding. The class was opposed by Joint Creators, who raised concerns about the lack of supporting evidence.

In light of the incomplete record, NTIA and the Register declined to recommend granting the exemption.

C. Conclusion

Having considered the evidence in the record, the contentions of the commenting parties, and the statutory objectives, the Register of Copyrights has recommended that the Librarian of Congress publish certain classes of works, as designated above, so that the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of those particular classes of works.

Dated: October 20, 2015.

Maria A. Pallante,

Register of Copyrights and Director of the U.S. Copyright Office.

Determination of the Librarian of Congress

Having duly considered and accepted the Recommendation of the Register of Copyrights, which Recommendation is hereby incorporated by reference, the Librarian of Congress, pursuant to 17 U.S.C. 1201(a)(1)(C) and (D), hereby publishes as a new rule the classes of copyrighted works that shall for a three-year period be subject to the exemption provided in 17 U.S.C. 1201(a)(1)(B) from the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A).

List of Subjects in 37 CFR Part 201

Copyright, Exemptions to prohibition against circumvention.

Final Regulations

For the reasons set forth in the preamble, 37 CFR part 201 is amended as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702

■ 2. Section 201.40 is amended by revising paragraph (b) and removing paragraph (d).

The revision reads as follows:

§ 201.40 Exemption to prohibition against circumvention.

* * * * *

(b) *Classes of copyrighted works.* Pursuant to the authority set forth in 17 U.S.C. 1201(a)(1)(C) and (D), and upon the recommendation of the Register of Copyrights, the Librarian has determined that the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of the following classes of copyrighted works:

(1) Motion pictures (including television shows and videos), as defined in 17 U.S.C. 101, where circumvention is undertaken solely in order to make use of short portions of the motion

[37] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 195–201.

[38] The Register's analysis and conclusions for this class, including citations to the record and relevant legal authority, can be found in the Recommendation at 354–55.

pictures for the purpose of criticism or comment in the following instances:

(i) For use in documentary filmmaking,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(ii) For use in noncommercial videos (including videos produced for a paid commission if the commissioning entity's use is noncommercial),

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(iii) For use in nonfiction multimedia e-books offering film analysis,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) Where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(iv) By college and university faculty and students, for educational purposes,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(v) By faculty of massive open online courses (MOOCs) offered by accredited nonprofit educational institutions to officially enrolled students through online platforms (which platforms themselves may be operated for profit), for educational purposes, where the MOOC provider through the online platform limits transmissions to the extent technologically feasible to such officially enrolled students, institutes copyright policies and provides copyright informational materials to faculty, students and relevant staff members, and applies technological measures that reasonably prevent unauthorized further dissemination of a work in accessible form to others or retention of the work for longer than the course session by recipients of a transmission through the platform, as contemplated by 17 U.S.C. 110(2),

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, on a Blu-ray disc protected by the Advanced Access Control System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(vi) By kindergarten through twelfth-grade educators, including of accredited general educational development (GED) programs, for educational purposes,

(A) Where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted, or

(B) In film studies or other courses requiring close analysis of film and media excerpts where the motion picture is lawfully made and acquired on a DVD protected by the Content Scramble System, or via a digital transmission protected by a technological measure, and where the person engaging in circumvention reasonably believes that screen-capture software or other non-circumventing alternatives are unable to produce the required level of high-quality content;

(vii) By kindergarten through twelfth-grade students, including those in accredited general educational development (GED) programs, for educational purposes, where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted; and

(viii) By educators and participants in nonprofit digital and media literacy programs offered by libraries, museums and other nonprofit entities with an educational mission, in the course of face-to-face instructional activities for educational purposes, where the circumvention is undertaken using screen-capture technology that appears to be offered to the public as enabling the reproduction of motion pictures after content has been lawfully acquired and decrypted.

(2) Literary works, distributed electronically, that are protected by technological measures that either prevent the enabling of read-aloud functionality or interfere with screen readers or other applications or assistive technologies,

(i) When a copy of such a work is lawfully obtained by a blind or other person with a disability, as such a person is defined in 17 U.S.C. 121; provided, however, that the rights owner is remunerated, as appropriate, for the price of the mainstream copy of the work as made available to the general public through customary channels, or

(ii) When such work is a nondramatic literary work, lawfully obtained and used by an authorized entity pursuant to 17 U.S.C. 121.

(3)(i) Computer programs that enable the following types of wireless devices

to connect to a wireless telecommunications network, when circumvention is undertaken solely in order to connect to a wireless telecommunications network and such connection is authorized by the operator of such network, and the device is a used device:

(A) Wireless telephone handsets (*i.e.,* cellphones);

(B) All-purpose tablet computers;

(C) Portable mobile connectivity devices, such as mobile hotspots, removable wireless broadband modems, and similar devices; and

(D) Wearable wireless devices designed to be worn on the body, such as smartwatches or fitness devices.

(ii) A device is considered ''used'' for purposes of this exemption when it has previously been lawfully acquired and activated on the wireless telecommunications network of a wireless carrier.

(4) Computer programs that enable smartphones and portable all-purpose mobile computing devices to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smartphone or device, or to permit removal of software from the smartphone or device. For purposes of this exemption, a ''portable all-purpose mobile computing device'' is a device that is primarily designed to run a wide variety of programs rather than for consumption of a particular type of media content, is equipped with an operating system primarily designed for mobile use, and is intended to be carried or worn by an individual.

(5) Computer programs that enable smart televisions to execute lawfully obtained software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications with computer programs on the smart television.

(6) Computer programs that are contained in and control the functioning of a motorized land vehicle such as a personal automobile, commercial motor vehicle or mechanized agricultural vehicle, except for computer programs primarily designed for the control of telematics or entertainment systems for such vehicle, when circumvention is a necessary step undertaken by the authorized owner of the vehicle to allow the diagnosis, repair or lawful modification of a vehicle function; and where such circumvention does not constitute a violation of applicable law, including without limitation regulations promulgated by the Department of Transportation or the Environmental Protection Agency; and provided, however, that such circumvention is initiated no earlier than 12 months after the effective date of this regulation.

(7)(i) Computer programs, where the circumvention is undertaken on a lawfully acquired device or machine on which the computer program operates solely for the purpose of good-faith security research and does not violate any applicable law, including without limitation the Computer Fraud and Abuse Act of 1986, as amended and codified in title 18, United States Code; and provided, however, that, except as to voting machines, such circumvention is initiated no earlier than 12 months after the effective date of this regulation, and the device or machine is one of the following:

(A) A device or machine primarily designed for use by individual consumers (including voting machines);

(B) A motorized land vehicle; or

(C) A medical device designed for whole or partial implantation in patients or a corresponding personal monitoring system, that is not and will not be used by patients or for patient care.

(ii) For purposes of this exemption, ''good-faith security research'' means accessing a computer program solely for purposes of good-faith testing, investigation and/or correction of a security flaw or vulnerability, where such activity is carried out in a controlled environment designed to avoid any harm to individuals or the public, and where the information derived from the activity is used primarily to promote the security or safety of the class of devices or machines on which the computer program operates, or those who use such devices or machines, and is not used or maintained in a manner that facilitates copyright infringement.

(8)(i) Video games in the form of computer programs embodied in physical or downloaded formats that have been lawfully acquired as complete games, when the copyright owner or its authorized representative has ceased to provide access to an external computer server necessary to facilitate an authentication process to enable local gameplay, solely for the purpose of:

(A) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game for personal gameplay on a personal computer or video game console; or

(B) Permitting access to the video game to allow copying and modification of the computer program to restore access to the game on a personal computer or video game console when necessary to allow preservation of the game in a playable form by an eligible library, archives or museum, where such activities are carried out without any purpose of direct or indirect commercial advantage and the video game is not distributed or made available outside of the physical premises of the eligible library, archives or museum.

(ii) Computer programs used to operate video game consoles solely to the extent necessary for an eligible library, archives or museum to engage in the preservation activities described in paragraph (i)(B).

(iii) For purposes of the exemptions in paragraphs (i) and (ii), the following definitions shall apply:

(A) ''Complete games'' means video games that can be played by users without accessing or reproducing copyrightable content stored or previously stored on an external computer server.

(B) ''Ceased to provide access'' means that the copyright owner or its authorized representative has either issued an affirmative statement indicating that external server support for the video game has ended and such support is in fact no longer available or, alternatively, server support has been discontinued for a period of at least six months; provided, however, that server support has not since been restored.

(C) ''Local gameplay'' means gameplay conducted on a personal computer or video game console, or locally connected personal computers or consoles, and not through an online service or facility.

(D) A library, archives or museum is considered ''eligible'' when the collections of the library, archives or museum are open to the public and/or are routinely made available to researchers who are not affiliated with the library, archives or museum.

(9) Computer programs that operate 3D printers that employ microchip-reliant technological measures to limit the use of feedstock, when circumvention is accomplished solely for the purpose of using alternative feedstock and not for the purpose of accessing design software, design files or proprietary data; provided, however, that the exemption shall not extend to any computer program on a 3D printer that produces goods or materials for use in commerce the physical production of which is subject to legal or regulatory oversight or a related certification process, or where the circumvention is otherwise unlawful.

(10) Literary works consisting of compilations of data generated by

medical devices that are wholly or partially implanted in the body or by their corresponding personal monitoring systems, where such circumvention is undertaken by a patient for the sole purpose of lawfully accessing the data generated by his or her own device or monitoring system and does not constitute a violation of applicable law, including without limitation the Health Insurance Portability and Accountability Act of 1996, the Computer Fraud and Abuse Act of 1986 or regulations of the Food and Drug Administration, and is accomplished through the passive monitoring of wireless transmissions that are already being produced by such device or monitoring system.

* * * * *

Dated: October 20, 2015.

David S. Mao,

Acting Librarian of Congress.

[FR Doc. 2015–27212 Filed 10–27–15; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0591; FRL–9934–14]

Methoxyfenozide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methoxyfenozide in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 28, 2015. Objections and requests for hearings must be received on or before December 28, 2015, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0591, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0591 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 28, 2015. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0591, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 4, 2015 (80 FR 11611) (FRL–9922–68), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E8298) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide methoxyfenozide, (3-methoxy-2-methylbenzoic acid 2-(3,5-dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide), under paragraph (a) in or on: Chive, fresh leaves at 30.0 parts per million (ppm); fruit, stone, group 12–12, except plum, prune, fresh at 3.0 ppm; and nut, tree, group 14–12 at 0.10 ppm. The petition also proposed the following tolerances under paragraph (a) be removed upon approval of the proposed tolerances listed above: Fruit, stone, group 12, except plum, prune, fresh at 3.0 ppm; nut, tree, group 14 at 0.10 ppm; pistachio at 0.10 ppm; and in paragraph (d), chive at 4.5 ppm be removed. The petition additionally

requested to amend the tolerances in 40 CFR 180.544 for residues of methoxyfenozide in or on onion, green, subgroup 3–07B at 5.0 ppm to onion, green, subgroup 3–07B, except chive at 5.0 ppm; and herb subgroup 19A, except chive at 400 ppm to herb subgroup 19A, except chive, fresh leaves at 400 ppm. That document referenced a summary of the petition prepared on behalf of IR–4 by Dow AgroSciences LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* No FFDCA-related comments were received on the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the amended tolerance on onion, green, subgroup 3–07B, except chive should be established in or on onion, green, subgroup 3–07B, except chive, fresh leaves. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for methoxyfenozide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with methoxyfenozide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Many of the available short-term or subchronic toxicity studies on methoxyfenozide showed little or no toxicity. The main target organs identified from the toxicity studies in the rat and dog were the liver, thyroid, and red blood cells (RBCs). The most consistent findings across species and studies were transiently decreased RBC parameters and increased liver, thyroid, adrenal, and spleen weights. Increases in thyroid and adrenal weights were observed in the rat chronic oral study. Thyroid weights were also increased in the dog following chronic exposure. However, no accompanying histopathology was observed.

Acute and subchronic oral neurotoxicity studies in the rat did not show evidence of potential neurotoxicity. In the acute study, decreased hindlimb grip strength on day 0 was reported in males. This finding was only observed at the limit dose in males and was not observed in the subchronic neurotoxicity study and was therefore not considered evidence of neurotoxicity. No clinical signs of neurotoxicity or neurohistopathology were observed in other guideline studies.

No maternal or developmental effects were observed in either the rat or rabbit oral developmental toxicity studies. In the rat 2-generation reproductive toxicity study, parental effects were limited to increased liver weight and microscopic periportal hypertrophy. No offspring or reproductive toxicity was observed. In a 28-day dietary immunotoxicity study in the rat, no immunotoxicity was observed, and the only observed effect was increased liver weights.

There was no evidence of carcinogenicity in the rat dietary 24-month chronic toxicity/carcinogenicity study or the mouse dietary 18-month carcinogenicity study. No mutagenic or clastogenic potential was observed in the battery of genotoxicity studies on methoxyfenozide. Based on these findings, methoxyfenozide is classified as not likely to be carcinogenic to humans.

Specific information on the studies received and the nature of the adverse effects caused by methoxyfenozide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Methoxyfenozide. Human Health Draft Risk Assessment for Registration Review and New Use Risk Assessment to Support the Registration of Proposed Use on Chives, and Crop Group Expansions for Stone Fruit and Tree Nuts'' in pp. 42–47 in docket ID number EPA–HQ–OPP–2014–0591.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.* A summary of the toxicological endpoints for methoxyfenozide used for human risk assessment is discussed in Table 1 of Unit III.B. of the final rule published in the **Federal Register** of August 27, 2014 (79 FR 51103) (FRL–9913–99).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to methoxyfenozide, EPA considered exposure under the petitioned-for tolerances as well as all existing methoxyfenozide tolerances in 40 CFR 180.544. EPA assessed dietary exposures from methoxyfenozide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments

are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for methoxyfenozide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA under the National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA), 2003 to 2008. As to residue levels in food, EPA used tolerance-level residues and the assumption of 100 percent crop treated (PCT) for all existing and proposed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that methoxyfenozide does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for methoxyfenozide. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The residues of concern in drinking water are methoxyfenozide and the degradates RH–117,236 and RH–131,154, which are only present at low concentrations. The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for methoxyfenozide and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of methoxyfenozide and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FQPA Index Reservoir Screening Tool (FIRST), Screening Concentration in Ground Water (SCI–GROW), and the Pesticide Root Zone Model Ground Water (PRZM GW) models, the estimated drinking water concentrations (EDWCs) of methoxyfenozide and its degradates for chronic exposures for non-cancer assessments are estimated to be 7.57 parts per billion (ppb) for surface water and 214 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 214 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Methoxyfenozide is currently registered for use on ornamentals in and around home gardens, which could result in residential exposures. EPA assessed residential exposure using the following assumptions: Residential handlers were assessed for potential short-term inhalation exposures from mixing, loading, and applying methoxyfenozide. A quantitative dermal assessment for residential handlers was not conducted since there is no systemic toxicity associated with dermal exposures to methoxyfenozide. Adult post-application exposures were not quantitatively assessed since no dermal hazard was identified for methoxyfenozide and inhalation exposures are typically negligible in outdoor settings. Furthermore, the inhalation exposure assessment performed for residential handlers is representative of worse case inhalation exposures and is considered protective for post-application inhalation exposure scenarios.

Post-application oral exposure to children is not expected since the extent to which young children engage in activities associated with areas where treated ornamentals are grown (or utilize these areas for prolonged periods of play) is low. Therefore, an incidental oral post-application exposure assessment was not conducted. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found methoxyfenozide to share a common mechanism of toxicity with any other substances, and methoxyfenozide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that methoxyfenozide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of qualitative or quantitative susceptibility of the developing fetus or offspring, based on the developmental and reproductive toxicity study results for methoxyfenozide. No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, and there was no evidence of offspring or reproductive toxicity in the rat 2-generation reproductive toxicity study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for methoxyfenozide is complete.

ii. There is no indication that methoxyfenozide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that methoxyfenozide results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. EPA

made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to methoxyfenozide in drinking water. Based on the discussion Unit III.C.3., regarding residential use patterns, EPA does not expect residential uses of methoxyfenozide to result in postapplication exposure of children or incidental oral exposures of toddlers. These assessments will not underestimate the exposure and risks posed by methoxyfenozide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, methoxyfenozide is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to methoxyfenozide from food and water will utilize 84% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of methoxyfenozide is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Methoxyfenozide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to methoxyfenozide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 540. Because EPA's level of concern for methoxyfenozide is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, methoxyfenozide is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for methoxyfenozide.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, methoxyfenozide is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to methoxyfenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology using high performance liquid chromatography (HPLC), with either tandem mass spectrometric detection (LC–MS/MS), or ultraviolet detection (UV) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for methoxyfenozide in or on chive or the commodities associated with herb subgroup 19A or green onion subgroup 3–07B. Codex has established an MRL in or on tree nuts at 0.1 milligram/kilogram (mg/kg), which is harmonized with the recommended tolerance of 0.10 ppm in or on tree nut crop group 14–12. However, Codex has established a tolerance in or on stone fruit at 2 mg/kg that cannot be harmonized with the EPA tolerance in or on stone fruit group 12–12, except plum, prune, fresh at 3.0 ppm because the Organization for Economic Cooperation and Development (OECD) tolerance calculations that EPA uses to calculate U.S. tolerance levels result in a tolerance that is higher than the Codex MRL, and reduction of the tolerance would result in the risk of violative residues resulting from proper use according to label directions.

C. Revisions to Petitioned-For Tolerances

Based on the data supporting the petition, the Agency determined that the petitioned-for tolerance on chive, fresh leaves at 30.0 ppm should be established in or on chive, fresh leaves at 30 ppm because EPA establishes tolerances using whole numbers for tolerances of 10 ppm or more, per the OECD tolerance calculation procedures. The Agency also determined that the petitioned-for-amended tolerance in or on onion, green, subgroup 3–07B, except chive should be established in or on onion, green, subgroup 3–07B, except chive, fresh leaves. This is due to the fact that only chive, fresh leaves are included in subgroup 3–07B, and the Agency is establishing a separate tolerance for chive, fresh leaves at 30 ppm.

V. Conclusion

Therefore, tolerances are established for residues of methoxyfenozide, (3-methoxy-2-methylbenzoic acid 2-(3,5-

dimethylbenzoyl)-2-(1,1-dimethylethyl) hydrazide), in or on chive, fresh leaves at 30 ppm; fruit, stone, group 12–12, except plum, prune, fresh at 3.0 ppm; herb subgroup 19A, except chive, fresh leaves at 400 ppm; onion, green, subgroup 3–07B, except chive, fresh leaves at 5.0 ppm; and nut, tree, group 14–12 at 0.10 ppm. This rule additionally removes the established tolerances in or on fruit, stone, group 12, except plum, prune, fresh at 3.0 ppm; herb subgroup 19A, except chive at 400 ppm; nut, tree, group 14 at 0.10 ppm; onion, green, subgroup 3–07B at 5.0 ppm; pistachio at 0.10 ppm; and in paragraph (d)(2), chive at 4.5 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.544:

■ a. Remove the following commodities from the table in paragraph (a): ''Fruit, stone, group 12, except plum, prune, fresh''; ''Herb subgroup 19A, except chive''; ''Nut, tree, group 14''; ''Onion, green, subgroup 3–07B''; and ''Pistachio''.

■ b. Remove the commodity ''Chive'' from the table in paragraph (d)(2).

■ c. Add alphabetically add the following commodities to the table in paragraph (a).

The additions and revisions read as follows:

§ 180.544 Methoxyfenozide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Chive, fresh leaves	30
* * * * *	
Fruit, stone, group 12–12, except plum, prune, fresh	3.0
* * * * *	
Herb subgroup 19A, except chive, fresh leaves	400
* * * * *	
Nut, tree, group 14–12	0.10
Onion, green, subgroup 3–07B, except chive, fresh leaves	5.0
* * * * *	

* * * * *

[FR Doc. 2015–27461 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2015–0001]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each

community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Ouachita Parish, Louisiana, and Incorporated Areas Docket No.: FEMA–B–1089			
Black Bayou	Just upstream of Glenwood Drive	+75	City of West Monroe, Unincorporated Areas of Ouachita Parish.
	Just downstream of Blanchard Street	+79	
Black Bayou Tributary	Approximately 500 feet downstream of McMillan Road	+79	City of West Monroe, Unincorporated Areas of Ouachita Parish.
	Approximately 1,320 feet upstream of Norris Road	+115	
Gravel Pit Branch	At the confluence with Black Bayou	+79	City of West Monroe.
	Just upstream of I–20	+89	
Ouachita River	Just upstream of Horseshoe Lake Road	+87	Town of Sterlington, Unincorporated Areas of Ouachita Parish.
	Approximately 1.0 mile upstream of Ouachita City Road	+88	
Tupawek Bayou	Approximately 1,000 feet downstream of Dean Chapel Road.	+97	Unincorporated Areas of Ouachita Parish.
	Approximately 680 feet downstream of Laird Road	+139	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of West Monroe

Maps are available for inspection at City Hall, 2305 North 7th Street, West Monroe, LA 71291.

Town of Sterlington

Maps are available for inspection at Town Hall, 503 Highway 2, Sterlington, LA 71280.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Ouachita Parish			
Maps are available for inspection at the Ray Oliver Wright Health Unit, 1650 Desiard Street, Suite 202, Monroe, LA 71201.			

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2015–27469 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XE216

Snapper-Grouper Fishery of the South Atlantic; 2015 Commercial Accountability Measure and Closure for South Atlantic Yellowtail Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the yellowtail snapper commercial sector in the exclusive economic zone (EEZ) of the South Atlantic for the 2015 fishing year through this temporary rule. Commercial landings for yellowtail snapper, as estimated by the Science and Research Director, are projected to reach the commercial annual catch limit (ACL) on October 31, 2015. Therefore, NMFS closes the yellowtail snapper commercial sector on October 31, 2015, through the remainder of the fishing year in the South Atlantic EEZ. This closure is necessary to protect the South Atlantic yellowtail snapper resource.

DATES: This rule is effective 12:01 a.m., local time, October 31, 2015, until 12:01 a.m., local time, January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes yellowtail snapper, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The yellowtail snapper commercial ACL is 1,596,510 lb (725,686 kg), round weight. Under 50 CFR 622.193(n)(1)(i), NMFS is required to close the yellowtail snapper commercial sector when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the yellowtail snapper commercial sector is projected to reach the ACL on October 31, 2015. Therefore, this temporary rule implements an AM to close the yellowtail snapper commercial sector in the South Atlantic EEZ, effective 12:01 a.m., local time, October 31, 2015.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having yellowtail snapper on board must have landed and bartered, traded, or sold such species prior to 12:01 a.m., local time, October 31, 2015. During the closure, the bag limit specified in 50 CFR 622.187(b)(4) and the possession limits specified in 50 CFR 622.187(c) apply to all harvest or possession of yellowtail snapper in or from the South Atlantic EEZ. These bag and possession limits apply on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. During the closure, the sale or purchase of yellowtail snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of yellowtail snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 31, 2015, and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of yellowtail snapper, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(n)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the yellowtail snapper commercial sector constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect yellowtail snapper since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 22, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–27421 Filed 10–26–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 141021887–5172–02]

RIN 0648–XE269

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels greater than 60 feet (18.3 meters (m)) length overall (LOA) using pot gear, American Fisheries Act (AFA) trawl catcher processors (C/Ps), and catcher vessels using trawl gear to Amendment 80 (A80) C/Ps, C/Ps using hook-and-line gear, and C/Ps using pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2015 total allowable catch of Pacific cod to be harvested.

DATES: Effective October 23, 2015, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2015 Pacific cod TAC specified for catcher vessels greater than 60 feet (18.3 m) LOA using pot gear in the BSAI is 17,641 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and reallocation (80 FR 57105, September 22, 2015). The Regional Administrator has determined that catcher vessels greater than 60 feet (18.3 m) LOA using pot gear in the BSAI will not be able to harvest 1,000 mt of the remaining 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*).

The 2015 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 43,224 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and reallocation (80 FR 57105, September 22, 2015). The Regional Administrator has determined that catcher vessels using trawl gear will not be able to harvest 3,870 mt of the remaining 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

The 2015 Pacific cod TAC specified for AFA trawl C/Ps in the BSAI is 5,623 mt as established by the final 2015 and 2016 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015) and reallocation (80 FR 57105, September 22, 2015). The Regional Administrator has determined that AFA trawl C/Ps will not be able to harvest 1,000 mt of the remaining 2015 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*7*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(B), NMFS reallocates 5,870 mt of Pacific cod to A80 C/Ps, C/Ps using hook-and-line gear, and C/Ps using pot gear in the Bering Sea and Aleutian Islands management area.

The harvest specifications for Pacific cod included in the final 2015 harvest specifications for groundfish in the BSAI (80 FR 11919, March 5, 2015, 80 FR 51757, August 26, 2015, and 80 FR 57105, September 22, 2015) are revised as follows: 16,641 mt for catcher vessels greater than 60 feet (18.3 m) LOA using pot gear, 39,354 mt for catcher vessels using trawl gear, 4,623 mt to AFA trawl C/Ps, 32,216 mt to A80 C/Ps, 111,071 mt for C/Ps using hook-and-line, and 5,829 mt for C/Ps using pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from multiple sectors to A80 C/Ps, C/Ps using hook-and-line gear, and C/Ps using pot gear in the Bering Sea and Aleutian Islands management area. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 19, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 23, 2015.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–27429 Filed 10–23–15; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 80, No. 208
Wednesday, October 28, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[Doc. No. AMS–FV–11–0074; PR–A1, A2, B and B2]

Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order; Termination of Rulemaking Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a rulemaking proceeding that proposed to establish a Hardwood Lumber and Hardwood Plywood Promotion, Research and Information Order (Order) under authority in the Commodity Promotion, Research and Information Act of 1996 (1996 Act). The Order was proposed by the proponent group, the Blue Ribbon Committee (BRC), and would have authorized a national research and promotion program for hardwood lumber and hardwood plywood. USDA issued a supplemental notice of proposed rulemaking in response to the extensive comments received. Based on comments received, outstanding substantive questions and significant proposed modifications from stakeholders, USDA is terminating the proceeding. Termination of this proceeding will remove ex parte communication prohibitions and allow USDA to engage fully with all interested parties to discuss and consider the evolving needs of the industry going forward.

DATES: This termination is made on October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (301) 334–2891, Fax: (301) 334–2896, or Email: *Patricia.Petrella@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include: A proposed rule published in the **Federal Register** on November 13, 2013 (78 FR 68298), which provided a 60-day comment period that ended on January 13, 2014. On January 16, 2014, a notice was published in the **Federal Register** that reopened and extended the comment period until February 18, 2014 (79 FR 2805). A supplemental notice of proposed rulemaking was published in the **Federal Register** on June 9, 2015 (80 FR 32493). On July 1, 2015, a notice was published in the **Federal Register** that extended the comment period until September 7, 2015 (80 FR 37555).

Preliminary Statement

In June 2011, USDA received a proposal for a national research and promotion program for hardwood lumber and hardwood plywood from the BRC. The BRC is a committee of 14 hardwood lumber and hardwood plywood industry leaders representing small and large manufacturers geographically distributed throughout the United States.

The BRC proposed a program that would be financed by an assessment on hardwood lumber and hardwood plywood manufacturers and administered by a board of industry members selected by the Secretary. The purpose of the program would be to strengthen the position of hardwood lumber and hardwood plywood in the marketplace and maintain and expand markets for hardwood lumber and hardwood plywood.

A proposed rule was published in the **Federal Register** on November 13, 2013, which provided a 60-day comment period that ended on January 13, 2014. On January 16, 2014, a notice was published in the **Federal Register** that reopened and extended the comment period until February 18, 2014. In response to the proposed rule, USDA received over 900 comments; a significant majority of the comments opposed the proposed program. In order to address the voluminous comments, USDA issued a supplemental notice of proposed rulemaking on June 9, 2015, which reopened the comment period only with respect to specific issues. The comment period was extended until September 7, 2015, by a notice in the **Federal Register** on July 1, 2015. In response to the supplemental notice, USDA received over 300 comments; a majority of the comments continued to oppose the program. Based on all the comments received, outstanding substantive questions and significant proposed modifications to the proposed program from stakeholders, USDA is terminating the proceeding. This action also terminates the proposed rules on the referendum procedures.

Termination of this proceeding will remove ex parte communication prohibitions and allow USDA to engage fully with all interested parties to discuss and consider the evolving needs of the industry going forward. Based on the above, USDA is terminating this rulemaking proceeding.

Regulatory Flexibility Act and Paperwork Reduction Act

As part of the proceeding conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act of 1955 (Pub. L. 104–13) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changed as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements. Accordingly, all supporting forms for the proposed program will be withdrawn.

Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding proposing a national research and promotion program for hardwood lumber and hardwood plywood should be and is hereby terminated.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Hardwood lumber promotion, Hardwood plywood promotion, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Dated: October 23, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–27448 Filed 10–27–15; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33–9965, 34–76240, 39–2507, IC–31879, IA–4238; File No. S7–21–15]

List of Rules To Be Reviewed Pursuant to the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Publication of list of rules scheduled for review.

SUMMARY: The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities.

DATES: Comments should be submitted by November 27, 2015.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number [S7–21–15] on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–21–15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Sullivan, Office of the General Counsel, 202–551–5019.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (''RFA''), codified at 5 U.S.C. 600–611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is ''to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1980, it stated that it ''intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.'' Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission during the next 12 months. The list includes 21 rules adopted by the Commission in 2004.

Title: Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies.

Citation: 17 CFR 270.30b1–5; 17 CFR 270.30a–2; 17 CFR 270.30a–3; 17 CFR 270.30d–1; 17 CFR 249.331; 17 CFR 249.332; 17 CFR 239.14; 17 CFR 239.15A; 17 CFR 239.17; 17 CFR 274.11A; 17 CFR 274.11a–1; 17 CFR 274.11b; 17 CFR 274.130; 17 CFR 274.128; 17 CFR 210.6; and 17 CFR 210.12.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77s(a), and 77z–3; 78j(b), 78l, 78m, 78o(d), 78w(a), and 78mm; 80a–6(c), 80a–8, 80a–24, 80a–24(a), 80a–29, 80a–30, and 80a–37.

Description: The amendments require open-end management investment companies to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; permit a management investment company registered under the Investment Company Act to include a summary portfolio schedule in its reports to shareholders; exempt money market funds from including a portfolio schedule in reports to shareholders provided that the complete portfolio schedule is filed with the Commission on Form N–CSR and is provided to shareholders free of charge; require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories; require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new Form N–Q and certified by the fund's principal executive and financial officers; and require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8393 (Feb. 27, 2004). The Commission considered comments received on the proposing

release and the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25870 (Dec. 18, 2002) at that time.

* * * * *

Title: Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission.

Citation: 17 CFR 200.30–7; 17 CFR 200.30–14; 17 CFR 201.100; 17 CFR 201.102; 17 CFR 111; 17 CFR 201.141; 17 CFR 201.150–154; 17 CFR 201.201–202; 17 CFR 201.210; 17 CFR 201.230–233; 17 CFR 201.350–351; 17 CFR 201.360; 17 CFR 201.400; 17 CFR 201.411; 17 CFR 201.420; 17 CFR 201.430; 17 CFR 201.440–441; 17 CFR 201.450–451; 17 CFR 201.460; 17 CFR 201.460; 17 CFR 201.470; 17 CFR 201.601; 17 CFR 201.1100–1106; 17 CFR 240.19d–4.

Authority: 15 U.S.C. 7202; 15 U.S.C. 77s, 78s, 77sss, 78w, 79t, . 80a–37 and 80a–39 and 80b–11.

Description: The Commission adopted rules and rule amendments to implement provisions under the Sarbanes-Oxley Act of 2002 that provided for the creation of Fair Funds and for Commission review of disciplinary actions imposed by the Public Company Accounting Oversight Board. The Commission also adopted rules and rule amendments to clarify or modify a variety of aspects of administrative proceedings, including certain motions, petitions, and filings, service and form of filings, and procedures for the production or subpoena of documents.

Prior Commission Determination under 5 U.S.C. 610: The Commission determined in Rel. No. 34–49412 (March 12, 2004) that the revision related solely to agency organization, procedure, or practice, and that, therefore, the Administrative Procedure Act and the Regulatory Flexibility Act did not apply to the rule. The Commission received no comments on this determination

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Title: Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date.

Citation: 17 CFR 240.13a–11; 17 CFR 240.15d–11; 17 CFR 249.308.

Authority: 15 U.S.C. 77g, 77*l*, 77s, 78j, 78*l,* 78m, 78o, and 78w.

Description: The Commission adopted rules and amendments to (i) expand the number of events that are reportable on Form 8–K, adding eight new items to the form, and transferring two items from the periodic reports, (ii) expand disclosures under two existing Form 8–K items, (iii) reorganize Form 8–K items into topical categories, (iv) shorten the Form 8–K filing deadline for most items to four business days after the occurrence of an event triggering the disclosure requirements of the form, and (v) adopt a limited safe harbor from liability for failure to file certain of the required Form 8–K reports.

Prior Commission Determination under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–8400 (March 16, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8106 (June 17, 2002) at that time.

* * * * *

Title: Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings.

Citation: 17 CFR 239.15A; 17 CFR 239.17a; 17 CFR 239.17b; 17 CFR 239.17c; 17 CFR 274.11A; 17 CFR 274.11b; 17 CFR 274.11c; and 17 CFR 274.11d.

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77ss(a), 80a–3, 80a–22, 80a–24(a), 80a–29, and 80a–37.

Description: The amendments require improved disclosure in fund prospectuses of a mutual fund's risks, policies, and procedures. In addition, the amendments clarify instructions to registration forms to require all mutual funds (other than money market funds) and insurance company managed separate accounts that offer variable annuities to explain in their prospectuses both the circumstances under which they will use fair value pricing and the effects of using fair value pricing. The amendments also require mutual funds and insurance company managed separate accounts that offer variable annuities to disclose their policies with respect to disclosure of portfolio holdings information.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8408 (Apr. 19, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. IC–26287 (Dec. 11, 2003) at that time.

* * * * *

Title: Mandated Electronic Filing for Form ID.

Citation: 17 CFR 232.10; 17 CFR 239.63; 17 CFR 249.446, 17 CFR 259.602; 17 CFR 269.7; 17 CFR 274.402.

Authority: 15 U.S.C. 77s, 77sss, 78c(b), 78m(a), 78w(a), 78*ll*(d),79t, 80a–29 and 80a–37.

Description: The Commission adopted rule and form amendments to mandate the electronic filing of Form ID on a new on-line system.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33–8410 April 21, 2004). The Commission solicited comments concerning the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8399 (March 15, 2004) but received no comment letters on the analysis.

* * * * *

Title: Foreign Bank Exemption from the Insider Lending Prohibition of Exchange Act Section 13(k).

Citation: 17 CFR 240.13k–1.

Authority: 15 U.S.C. 77f, 77g, 77h, 77j,77s, 78c, 78*l,* 78m, 78w, and 78mm.

Description: The Commission adopted a rule that grants qualified foreign banks an exemption from the insider lending prohibition under Section 13(k) of the Securities Exchange Act of 1934.

Prior Commission Determination under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34–48481 (September 11, 2003). As stated in the adopting release, Release No. 34–49616 (April 26, 2004), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Disclosure of Breakpoint Discounts by Mutual Funds.

Citation: 17 CFR 239.15A; 17 CFR 274.11A.

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), 80a–8, 80a–24(a), 80a–29 and 80a–37.

Description: The form amendments require an open-end management investment company to provide enhanced disclosure regarding breakpoint discounts on front-end sales loads. Under the amendments, an open-end management investment company is required to describe in its prospectus any arrangements that result in breakpoints in sales loads and to provide a brief summary of shareholder eligibility requirements.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory

Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33–8427 (June 7, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8347 (Dec. 17, 2003) at that time.

* * * * *

Title: Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities.

Citation: 17 CFR 200.30–3, 17 CFR 240.15c3–1, 17 CFR 240.17a–4, 17 CFR 240.17a–5, 17 CFR 240.17a–11, 17 CFR 240.17h–1T, and 17 CFR 240.17h–2T.

Authority: 15 U.S.C. 78o(c), 78q(a), 78w, 78x(b) and 78mm.

Description: The Commission adopted rule amendments that established a voluntary, alternative method of computing deductions to net capital for certain broker-dealers. This alternative method permits a broker-dealer to use mathematical models to calculate net capital requirements for market and derivatives-related credit risk. A broker-dealer using the alternative method of computing net capital is subject to enhanced net capital, early warning, recordkeeping, reporting, and certain other requirements, and must implement and document an internal risk management system.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission certified that the amendments would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34–48690 (Oct. 24, 2003). As stated in the adopting release, Release No. 34–49830 (June 8, 2004), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

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Title: Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies.

Citation: 17 CFR 239.14; 17 CFR 239.15A; 17 CFR 239.17a; 17 CFR 274.11A; 17 CFR 274.11a–1; 17 CFR 274.11b; 17 CFR 240.14a–101.

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), 78n, 78w(a)(1), 80a–8, 80a–15, 80a–20, 80a–24(a), 80a–29 and 80a–37.

Description: The rule and form amendments require a registered management investment company to provide disclosure in its reports to shareholders regarding the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of advisory contracts during the most recent fiscal half-year. The amendments are also designed to encourage improved disclosure in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34–49928 (June 23, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 34–49014 (Feb. 11, 2004) at that time.

* * * * *

Title: Collection Practices under Section 31 of the Exchange Act.

Citation: 17 CFR 200.30–3, 17 CFR 240.31.

Authority: 15 U.S.C. 78f, 78o–3, 78q–1, 78s, 78w(a) and 78ee.

Description: The rule established new procedures to govern the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations to the Commission pursuant to Section 31 of the Securities Exchange Act of 1934. Under these new procedures, each exchange or association must provide the Commission with data on its securities transactions. The Commission calculates the amount of fees and assessments due based on the volume of these transactions and bills the exchange or association that amount.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that Rule 31 and Form R31 would not have a significant economic impact on a substantial number of small businesses. This certification was set forth in the Proposing Release No. 34–49014 (January 20, 2004). As stated in the adopting release, Release No. 34–49928 (June 28, 2004), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Investment Adviser Codes of Ethics.

Citation: 17 CFR 275.204A–1; 17 CFR 275.204–2; 17 CFR 279.1; 17 CFR 270.17j–1.

Authority: 15 U.S.C. 77s(a), 77sss(a), 78a–37(a), 78w(a), 78bb(e)(2),79w(a), 80a–17(j), 80a–37(a), 80b–2(a)(17), 80b–3(c)(1), 80b–4, 80b–4(a), 80b–6(4) and 80b–11(a).

Description: The rule and rule amendments require registered advisers to adopt codes of ethics. The codes of ethics must set forth standards of conduct expected of advisory personnel and address conflicts that arise from personal trading by advisory personnel. Among other things, the rule and rule amendments require advisers' supervised persons to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The rule and rule amendments are designed to promote compliance with fiduciary standards by advisers and their personnel.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IA–2256 (July 2, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. IA–2209 (Jan. 20, 2004) at that time.

* * * * *

Title: Covered Securities Pursuant to Section 18 of the Securities Act of 1933.

Citation: 17 CFR 230.146.

Authority: 15 U.S.C. 77r(b)(1)(B) and 77s(a).

Description: The Commission amended a rule under Section 18 of the Securities Act of 1933 to designate options listed on the International Securities Exchange, Inc. as covered securities. Covered securities under Section 18 of the Securities Act are exempt from state law registration requirements.

Prior Commission Determination Under 5 U.S.C. 601: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that amending Rule 146(b) would not have a significant economic impact on a substantial number of small entities. The certification was incorporated in the proposing release, Release No. 33–8404 (March 22, 2004). As stated in the adopting release, Release No. 33–8442 (July 14, 2004), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

* * * * *

Title: Investment Company Governance.

Citation: 17 CFR 270.0–1(a); 17 CFR 270.10f–3; 17 CFR 270.12b–1(c); 17 CFR 270.15a–4(b)(2); 17 CFR 270.17a–7(f); 17 CFR 270.17a–8(a)(4); 17 CFR 270.17d–1(d)(7); 17 CFR 270.17e–1(c); 17 CFR

270.17g–1(j)(3); 17 CFR 270.18f–3(e); 17 CFR 270.23c–3(b)(8); 17 CFR 270.31a–2.

Authority: 15 U.S.C., 80a–6(c), 80a–10(f), 80a–12(b), 80a–17(d), 80a–17(g), 80a–23(c), 80a–30(a), and 80a–37(a).

Description: A Federal appeals court vacated certain amendments adopted by the Commission to rules under the Investment Company Act. The amendments, first proposed on January 15, 2004, would have imposed two conditions on investment companies (''funds'') relying on certain exemptive rules. First, fund boards would have to have been comprised of at least 75 percent independent directors. Second, the boards would have to have been chaired by an independent director. In June 2006 and December 2006, the Commission requested additional comment regarding the fund governance provisions.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 relating to the amendments to the exemptive rules and the Commission's rules on investment company governance in conjunction with the Commission's adoption of Release No. IC–26520 on July 27, 2004. Comments to the proposing release (Release No. IC–26323 (Jan. 24, 2004)) and any comments to the Initial Regulatory Flexibility Analysis were considered in connection with the Commission's adoption of Release No. IC–26520.

* * * * *

Title: Short Sales.

Citation: 17 CFR 242.200, 17 CFR 242.202T, 17 CFR 242.203.

Authority: 15 U.S.C. 78b, 78c(b), 78i(h), 78j, 78k–1, 78o, 78q(a), 78q–1, 78w(a), and 78mm.

Description: The Commission adopted new Regulation SHO, which defined ownership of securities, specified aggregation of long and short positions, and required broker-dealers to mark sales in all equity securities ''long,'' ''short,'' or ''short exempt.'' Regulation SHO also included a temporary rule that established procedures for the Commission to suspend temporarily the operation of the ''tick'' test and any short sale price test of any exchange or national securities association for specified securities. Regulation SHO also required short sellers in all equity securities to locate securities to borrow before selling, and also imposed additional delivery requirements on broker-dealers for securities in which a substantial number of failures to deliver had occurred. The Commission also adopted amendments that removed the shelf offering exception and issued interpretive guidance addressing sham transactions designed to evade Regulation M.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34 –50103 (July 28, 2004). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 34–48709 (October 28, 2003), but received no comment on that analysis. The Commission did receive comments related to small business, and considered those comments in the adopting release.

* * * * *

Title: Disclosure Regarding Portfolio Managers of Registered Management Investment Companies.

Citation: 17 CFR 239.14; 17 CFR 239.15A; 17 CFR 239.17a; 17 CFR 249.331; 17 CFR 270.30a–2; 17 CFR 274.11a–1; 17 CFR 274.11A; 17 CFR 274.11b; 17 CFR 274.128.

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), 78(j(b), 78m, 78n, 78o(d), 78w(a), 78mm,, 80a–8, 80a–24(a), 80a–29, 80a–37, 80a–39.

Description: The forms and rule amendments improve the disclosure provided by registered investment companies regarding their portfolio managers. The amendments extend the existing requirement that a registered management investment company provide basic information in its prospectus regarding its portfolio managers to include the members of management teams. The amendments also require a registered management investment company to disclose additional information about its portfolio managers, including other accounts that they manage, compensation structure, and ownership of securities in the investment company.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No 33–8458 (Aug. 23, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 33–8396 (Mar. 11, 2004) at that time.

* * * * *

Title: Rule 15c3–3 Reserve Requirements for Margin Related to Security Futures Products.

Citation: 17 CFR 200.30–3 and 17 CFR 240.15c3–3a.

Authority: 15 U.S.C. 78o, 78q, 78w(a), and 78mm.

Description: The Commission adopted amendments to the formula for determination of customer reserve requirements of broker-dealers under the Exchange Act to address issues related to customer margin for security futures products. The amendments permit a broker-dealer to include margin related to security futures products written, purchased, or sold in customer securities accounts and on deposit with a registered clearing agency or a derivatives clearing organization as a debit item in calculating its customer reserve requirement under specified conditions. The amendments were intended to help ensure that a broker-dealer is not required to fund its customer reserve requirements with proprietary assets.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission certified that the amendments to Rule 15c3–3a would not have a significant impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 46492 (Sept. 12, 2002). As stated in the adopting release, Release No. 33–50295, the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

* * * * *

Title: Prohibition on the Use of Brokerage Commissions to Finance Distribution.

Citation: 17 CFR 270.12b–1.

Authority: 15 U.S.C. 80a–12(b) and 80a–37(a).

Description: The amendments amend the rule that governs the use of assets of open-end management investment companies (funds) to distribute their shares. The amended rule prohibits funds from paying for the distribution of their shares with brokerage commissions. The amendments are designed to end a practice that poses significant conflicts of interest and may be harmful to funds and fund shareholders.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC–26591 (September 2, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. IC–26356 (Feb.24, 2004) at that time.

* * * * *

Title: Proposed Rule Changes of Self-Regulatory Organizations.

Citation: 17 CFR 240.11Aa3–2 and 17 CFR 240.19b–4.

Authority: 15 U.S.C. 78c, 78f, 78k–1, 78o–3, 78o–4, 78q–1, 78s(b), 78w(a), 78mm.

Description: The Commission adopted rule amendments that require self-regulatory organizations (SROs) to file proposed rule changes electronically with the Commission, rather than in paper form. In addition, the Commission required SROs to post all proposed rule changes, as well as current and complete sets of their rules, on their Web sites. The Commission also required all participants in National Market System Plans (NMS Plans) to arrange for posting on a designated Web site a current and complete version of the NMS Plan.

Prior Commission Determination Under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that amending Rule 19b–4 and Form 19b–4 would not have a significant economic impact on a substantial number of small businesses. This certification was incorporated in the proposing release, Release No. 49505 (March 30, 2004). As stated in the adopting release, Release No. 34–50486 (Oct.4, 2004), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

* * * * *

Title: Disposal of Consumer Report Information.

Citation: 17 CFR 248.1; 17 CFR 248.2; 17 CFR 248.30.

Authority: 15 U.S.C. 6801(b), 15 U.S.C. 1681w, 15 U.S.C. 78q, 78w, 78mm, 80a–30(a), 80a–37, 80b–4 and 80b–11.

Description: The amendments to the rule under Regulation S–P require financial institutions to adopt policies and procedures to safeguard customer information. The amended rule implements the provision in section 216 of the Fair and Accurate Credit Transactions Act of 2003 requiring proper disposal of consumer report information and records. Section 216 directs the Commission and other federal agencies to adopt regulations requiring that any person who maintains or possesses consumer report information or any compilation of consumer report information derived from a consumer report for a business purpose must properly dispose of the information. The amendments also require the policies and procedures adopted under the safeguard rule to be in writing.

Prior Commission Determination Under 5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34–50781 (Dec. 2, 2004). The Commission considered comments received on the proposing release and the Initial Regulatory Flexibility Analysis prepared in Release No. 34–50361 (Sept. 14, 2004) at that time.

* * * * *

Title: Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries.

Citation: 17 CFR 240.17Ad–20.

Authority: 15 U.S.C. 78q–1(a)(1), 78q–1(a)(2), 78q–1(d), and 78w(a).

Description: The Commission adopted a new rule to prohibit registered transfer agents from effecting any transfer of any equity security registered under Section 12 or any equity security that subjects an issuer to reporting under Section 15(d) of the Exchange Act if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary, such as clearing agencies, banks, or broker-dealers.

Prior Commission Determination Under 5 U.S.C. 610: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34–50758A (December 7, 2004). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 49809 (June 4, 2004), but received no comment on that analysis.

* * * * *

Title: Asset-Backed Securities.

Citation: 17 CFR 210.1–02, 17 CFR 210–2.01, 17 CFR 210.2–02, 17 CFR 210.2–07, 17 CFR 229.10, 17 CFR 229.202, 17 CFR 229.308, 17 CFR 229.401, 17 CFR 229.406, 17 CFR 229.501, 17 CFR 229.503, 17 CFR 229.512, 17 CFR 229.601, 17 CFR 229.701, 17 CFR 229.1100 through 1123, 17 CFR 230.411, 17 CFR 230.434, 17 CFR 230.139a, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.191, 17 CFR 230.426, 17 CFR 232.311, 17 CFR 232.312, 17 CFR 239.11, 17 CFR 239.12, 17 CFR 239.13, 17 CFR 239.18, 17 CFR 239.31, 17 CFR 239.32, 17 CFR 239.33, 17 CFR 240.10A–3, 17 CFR 240.12b–2, 17 CFR 240.12b–15, 17 CFR 240.12b–25, 17 CFR 240.13a–10, 17 CFR 240.13a–11, 17 CFR 240.13a–13, 17 CFR 240.13a–14, 17 CFR 240.13a–15, 17 CFR 240.13a–16, 17 CFR 240.15c2–8, 17 CFR 240.15d–10, 17 CFR 240.15d–11, 17 CFR 240.15d–13, 17 CFR 240.15d–14, 17 CFR 240.15d–15, 17 CFR 240.15d–16, 17 CFR 240.3a12–12, 17 CFR 240.3b–19, 17 CFR 240.13a–17, 17 CFR 240.13a–18, 17 CFR 240.15d–17, 17 CFR 240.15d–18, 17 CFR 240.15d-22, 17 CFR 240.15d-23, 17 CFR 242.100, 17 CFR 245.101, 17 CFR 249.220f, 17 CFR 249.240f, 17 CFR 249.308, 17 CFR 249.310, 17 CFR 249.312, and 17 CFR 249.322.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77q(a), 77s, 77s(a), 77sss(a), 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 7nnn, 77sss, 78(b), 78c, 78c(b), 78g(c)(2), 78i(a), 78j, 78j–1, 78k–1(c), 78*l,* 78m, 78n, 78o, 78o(b), 78o(c), 78o(d), 78q, 78q(a), 78q(b), 78q(h), 78u–5, 78(w), 78w(a), 78dd–1, 78*ll,* 78*ll*(d), 78mm, 79e, 79e(b), 79f, 79f, 79j, 79j(a), 79*l,* 79m, 79n, 79q, 79t, 79t(a), 80a–8, 80a–20, 80a–23, 80a–24, 80a–26, 80a–29, 80a–30, 80a–31, 80a–37, 80a–37(a), 80b–3, 80b–11, 7201 et seq., 7202, 7262, and 18 U.S.C. 1350.

Description: The Commission adopted new and amended rules and forms to address comprehensively the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. The final rules and forms accomplish the following: update and clarify the Securities Act registration requirements for asset-backed securities offerings, including expanding the types of asset-backed securities that may be offered in delayed primary offerings on Form S–3; consolidate and codify existing interpretive positions that allow modified Exchange Act reporting that is more tailored and relevant to asset-backed securities; provide tailored disclosure guidance and requirements for Securities Act and Exchange Act filings involving asset-backed securities; and streamline and codify existing interpretive positions that permit the use of written communications in a registered offering of asset-backed securities in addition to the statutory registration statement prospectus.

Prior Commission Determination under 5 U.S.C. 610: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the new and amended rules and forms would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 33–8419 (May 3, 2004). As stated in the adopting release, Release No. 33–8518 (December 22, 2004) the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

By the Commission.

Dated: October 22, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–27385 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2015–F–3663]

Grocery Manufacturers Association; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by the Grocery Manufacturers Association, proposing that the food additive regulations be amended to provide for the safe use of partially hydrogenated vegetable oils (PHOs) in various food applications.

DATES: This food additive petition was filed on October 1, 2015. Submit either electronic or written comments on the petitioner's environmental assessment by November 27, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–F–3663 for ''Grocery Manufacturers Association; Filing of Food Additive Petition''. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1309.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), we are giving notice that we have filed a food additive petition (FAP 5A4811), submitted by the Grocery Manufacturers Association, 1350 I Street, NW., Suite 300, Washington, DC 20005. The petition proposes to amend the food additive regulations in 21 CFR part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* to provide for the safe use of PHOs in the following food applications at specified maximum use levels: As a carrier or component thereof for flavors or flavorings, as a diluent or component thereof for color additives, as an incidental additive or processing aid, and as a direct additive in specific foods.

We are reviewing the potential environmental impact of this petition. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), we are placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

We will also place on public display, in the Division of Dockets Management and at *http://www.regulations.gov,* any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on our review, we find that an environmental impact statement is not required, and this petition results in a regulation, we will publish the notice of availability of our finding of no significant impact and the evidence supporting that finding with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: October 22, 2015.

Dennis M. Keefe,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2015–27277 Filed 10–27–15; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 62, and 78

[EPA–HQ–OAR–2015–0199; FRL 9936–27–OAR]

RIN 2060–AS47

Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) is announcing four public hearings to be held on the proposed ''Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations.''

DATES: The EPA will be holding four public hearings on the proposed federal plan to accept oral comments.

The hearings will be held:

1. November 12–13, 2015 in Pittsburgh, PA.
2. November 16–17, 2015, in Denver, Colorado.
3. November 18–19, 2015 in Washington, DC.
4. November 19–20, 2015 in Atlanta, Georgia.

The first hearing day in all locations will begin at 9:00 a.m. (local time) and will conclude at 8:00 p.m. (local time). The second hearing day in all locations will begin at 9:00 a.m. (local time) and conclude at 5:00 p.m. (local time).

ADDRESSES: The hearings will be held in:

1. Pittsburgh, Pennsylvania, on November 12–13, at the William S. Moorhead Federal Building, 1000 Liberty Avenue, Room 1310, Pittsburgh, Pennsylvania 15222;
2. Denver, Colorado, on November 16–17, 2015, at the EPA Region 8 office, 1595 Wynkoop Street, Denver, Colorado 80202;
3. Washington, DC, on November 18–19, 2015, at the EPA William Jefferson Clinton East Building, 1201 Constitution Avenue NW., Washington, DC 20004; and
4. Atlanta, Georgia, on November 19–20, 2015, at the Sam Nunn Atlanta Federal Center Main Tower Bridge Conference Center, 61 Forsyth Street SW., Atlanta, Georgia 30303.

The hearings on the first day in all locations will begin at 9:00 a.m. (local time) and will conclude at 8:00 p.m. (local time). The hearings on the second day in all locations will begin at 9:00 a.m. (local time) and will conclude at 5:00 p.m. (local time). There will be a lunch break from 12:00 p.m. to 1:00 p.m. and a dinner break from 5:00 p.m. to 6:00 p.m. (on the first day of hearings only).

FOR FURTHER INFORMATION CONTACT: To register to speak at a hearing, please use the online registration form available at *http://www.epa.gov/cleanpowerplan* or contact Ms. Virginia Hunt at (919) 541–0832 or at *hunt.virginia@epa.gov.* The last day to pre-register to speak at the Pittsburgh, Pennsylvania, hearing will be Tuesday, November 10, 2015, and the last day to pre-register to speak at the Denver, Colorado, Washington, DC, and Atlanta, Georgia, hearings will be Thursday, November 12, 2015. Additionally, requests to speak will be taken the day of each hearing at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. Please note that registration requests received before each hearing will be confirmed by the EPA via email. We cannot guarantee that we can accommodate all timing requests and will provide requestors with the next available speaking time, in the event that their requested time is taken. Please note that the time outlined in the confirmation email received will be the scheduled speaking time. Again, depending on the flow of the day, times may fluctuate. If you require the service of a translator or special accommodations such as audio description, we ask that you pre-register for the hearings by Friday, November 6, 2015, as we may not be able to arrange such accommodations without advance notice. Please note that any updates made to any aspect of the hearings will be posted online at *http://www.epa.gov/cleanpowerplan.* While the EPA expects the hearings to go forward as set forth above, we ask that you monitor our Web site or contact Ms. Virginia Hunt at (919) 541–0832 or at *hunt.virginia@epa.gov* to determine if there are any updates to the information on the hearings. The EPA does not intend to publish a notice in the **Federal Register** announcing any such updates.

SUPPLEMENTARY INFORMATION: The hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. The EPA will make every effort to accommodate all speakers who wish to register to speak at the hearing venue on the day of the hearing. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA plans for the hearings to run on schedule; however, due to on-site schedule fluctuations, actual speaking times may shift slightly.

Because these hearings are being held at United States government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. If your driver's license is issued by Alaska, American Samoa, Arizona, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Montana, New York, Oklahoma, or the state of Washington, you must present an additional form of identification to enter the federal building. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons.

Attendees will be asked to go through metal detectors. To help facilitate this process, please be advised that you will be asked to remove all items from all pockets and place them in provided bins for screening; remove laptops, phones, or other electronic devices from their carrying case and place in provided bins for screening; avoid shoes with metal shanks, toe guards, or supports as a part of their construction; remove any metal belts, metal belt buckles, large jewelry, watches, and follow the instructions of the guard if

identified for secondary screening. Additionally, no weapons (*e.g.,* pocket knives) or drugs or drug paraphernalia (*e.g.,* marijuana) will be allowed in the building. We recommend that you arrive 20 minutes in advance of your speaking time to allow time to go through security and to check in with the registration desk.

How can I get copies of this document and other related information?

For more information on this rulemaking, please visit *http://www.epa.gov/cleanpowerplan.* For questions regarding this rulemaking, please contact: Ms. Toni Jones, Fuels and Incineration Group, Sector Policies and Programs Division (E143–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0316; fax number: (919) 541–3470; email address: *jones.toni@epa.gov.*

Dated: October 22, 2015.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2015–27367 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0174; FRL–9936–29–OW]

Extension of Public Comment Period for the Revision of Certain Federal Water Quality Criteria Applicable to Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule, ''Revision of Certain Federal Water Quality Criteria Applicable to Washington.'' In response to stakeholder requests, EPA is extending the comment period for an additional 45 days, from November 13, 2015, to December 28, 2015. EPA will offer virtual public hearings on the proposed rule via the Internet in December 2015.

DATES: The comment period for the proposed rule published September 14, 2015 (80 FR 55063) is extended. Comments must be received on or before December 28, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0174, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2015, EPA published the proposed rule, ''Revision of Certain Federal Water Quality Criteria Applicable to Washington'' in the **Federal Register** (80 FR 55063). EPA proposes to revise the current federal Clean Water Act human health criteria applicable to waters under the state of Washington's jurisdiction to ensure that the criteria are set at levels that will adequately protect Washington residents, including tribes with treaty-protected rights, from exposure to toxic pollutants.

The original deadline to submit comments on the proposed rule was November 13, 2015. This action extends the comment period for 45 days. Written comments must now be received by December 28, 2015.

Additionally, EPA will offer virtual public hearings on the proposed rule via the Internet in December 2015. For details on these public hearings, such as the date and time as well as registration information, please visit *http://www2.epa.gov/wqs-tech/water-quality-standards-regulations-washington.*

Dated: October 20, 2015.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2015–27474 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[NIOSH Docket 094]

World Trade Center Health Program; Petition 009—Autoimmune Diseases; Finding of Insufficient Evidence

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Denial of petition for addition of a health condition.

SUMMARY: On September 14, 2015, the Administrator of the World Trade Center (WTC) Health Program received a petition (Petition 009) to add the autoimmune disease multiple sclerosis to the List of WTC-Related Health Conditions (List). Upon reviewing the information provided by the petitioner, the Administrator has determined that Petition 009 is not substantially different from Petitions 007 and 008, which also requested the addition of autoimmune diseases. The Administrator recently published responses to both Petition 007 and Petition 008 in the **Federal Register** and has determined that Petition 009 does not provide additional evidence of a causal relationship between 9/11 exposures and autoimmune diseases. Accordingly, the Administrator finds that insufficient evidence exists to request a recommendation of the WTC Health Program Scientific/Technical Advisory Committee (STAC), to publish a proposed rule, or to publish a determination not to publish a proposed rule.

DATES: The Administrator of the WTC Health Program is denying this petition for the addition of a health condition as of October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Program Analyst, 1090 Tusculum Avenue, MS: C–46, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

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B. Petition 009
C. Administrator's Determination on Petition 009

A. WTC Health Program Statutory Authority

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), amended the Public Health Service Act (PHS Act) to add Title XXXIII [1] establishing the WTC Health Program within the Department of Health and Human Services (HHS). The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001 or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator of the WTC Health Program (Administrator) in this notice mean the Director of the National Institute for Occupational Safety and Health (NIOSH) or his or her designee.

Pursuant to section 3312(a)(6)(B) of the PHS Act, interested parties may petition the Administrator to add a health condition to the List in 42 CFR 88.1. Within 60 calendar days after receipt of a petition to add a condition to the List, the Administrator must take one of the following four actions described in section 3312(a)(6)(B) and 42 CFR 88.17: (i) Request a recommendation of the STAC; (ii) publish a proposed rule in the **Federal Register** to add such health condition; (iii) publish in the **Federal Register** the Administrator's determination not to publish such a proposed rule and the basis for such determination; or (iv) publish in the **Federal Register** a determination that insufficient evidence exists to take action under (i) through (iii) above. However, in accordance with 42 CFR 88.17(a)(4), the Administrator is required to consider a new petition for a previously-evaluated health condition determined not to qualify for addition to the List only if the new petition presents a new medical basis—evidence not previously reviewed by the Administrator—for the association between 9/11 exposures and the condition to be added.

[1] Title XXXIII of the PHS Act is codified at 42 U.S.C. 300mm to 300mm–61. Those portions of the Zadroga Act found in Titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

B. Petition 009

On September 14, 2015, the Administrator received a petition to add the autoimmune disease multiple sclerosis to the List (Petition 009).[2] This is the third petition to the Administrator requesting the addition of autoimmune diseases to the List; the first autoimmune disease petition, Petition 007, was denied due to insufficient evidence as described in a **Federal Register** notice published on June 8, 2015 (80 FR 32333); the second, Petition 008, was also denied due to insufficient evidence as described in a separate **Federal Register** notice published on July 10, 2015 (80 FR 39720). This petition, Petition 009, presented as evidence a newspaper article referencing a study recently published in the Journal of Arthritis and Rheumatology by Webber *et al.* [2015],[3] as well as the journal article itself, which was designed to test the hypothesis that acute and chronic 9/11 work-related exposures were associated with the risk of certain new-onset systemic autoimmune diseases.

Although Petition 009 specifically requested the addition of multiple sclerosis, an autoimmune condition, the Administrator determined that the scope of the petition properly includes only the autoimmune diseases identified in Webber *et al.,* cited as evidence in Petitions 007, 008, and 009.[4] Multiple sclerosis is not among the autoimmune diseases studied by Webber *et al.* No other evidence was provided in Petition 009 to support the addition of multiple sclerosis to the List; therefore, multiple sclerosis is not addressed in this action.

C. Administrator's Determination on Petition 009

The Administrator has established a methodology for evaluating whether to add non-cancer health conditions to the List of WTC-Related Health Conditions, published online in the Policies and Procedures section of the WTC Health Program Web site.[5] However, the Administrator has determined that the methodology is not triggered in this case because Petition 009 requested the addition of the autoimmune diseases identified in Webber *et al.* previously reviewed by the Program, and presented no new evidence of a causal association between 9/11 exposures and autoimmune diseases. In response to Petition 007, which also requested the addition of autoimmune diseases, the Administrator reviewed the findings presented in the Webber study and determined that insufficient evidence exists to take any of the following actions: Propose the addition of autoimmune diseases to the List (pursuant to PHS Act, section 3312(a)(6)(B)(ii) and 42 CFR 88.17(a)(2)(ii)); publish a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, section 3312(a)(6)(B)(iii) and 42 CFR 88.17(a)(2)(iii)); or request a recommendation from the STAC (pursuant to PHS Act, section 3312(a)(6)(B)(i) and 42 CFR 88.17(a)(2)(i)). The Webber study was also presented as evidence to support Petition 008 regarding autoimmune disorders, specifically encephalitis of the brain. Because the Administrator recently evaluated the Webber study in responding to Petitions 007 and 008, there is no need to reevaluate the same evidence again in response to the request to add autoimmune diseases in Petition 009, which also presented the Webber study as evidence of a causal association between 9/11 exposures and autoimmune diseases.

Accordingly, with regard to Petition 009, the Administrator has determined that insufficient evidence exists to take further action, including either proposing the addition of autoimmune diseases to the List (pursuant to PHS Act, section 3312(a)(6)(B)(ii) and 42 CFR 88.17(a)(2)(ii)) or publishing a determination not to publish a proposed rule in the **Federal Register** (pursuant to PHS Act, section 3312(a)(6)(B)(iii) and 42 CFR 88.17(a)(2)(iii)). The Administrator has also determined that requesting a recommendation from the STAC (pursuant to PHS Act, section 3312(a)(6)(B)(i) and 42 CFR 88.17(a)(2)(i)) is unwarranted.

For the reasons discussed above, the request made in Petition 009 to add the autoimmune disease multiple sclerosis to the List of WTC-Related Health Conditions is denied.

The Administrator is aware that another study of autoimmune diseases among WTC Health Program members is

[2] See Petition 009. WTC Health Program: Petitions Received. *http://www.cdc.gov/wtc/received.html.*

[3] Webber MP, Moir W, Zeig-Owens R, Glaser MS, Jaber N, Hall C, Berman J, Qayyum B, Loupasakis K, Kelly K, and Prezant DJ [20015]. Nested case-control study of selected systemic autoimmune diseases in World Trade Center rescue/recovery workers. Journal of Arthritis & Rheumatology 67(5):1369–1376.

[4] This determination is consistent with the Administrator's reasoning in the Petition 007 finding of insufficient evidence. 80 FR 32333, June 8, 2015.

[5] ''Policy and Procedures for Adding Non-Cancer Conditions to the List of WTC-Related Health Conditions,'' John Howard MD, Administrator of the WTC Health Program, October 21, 2014. *http://www.cdc.gov/wtc/pdfs/WTCHP_PP_Adding_NonCancers_21_Oct_2014.pdf.*

being conducted by the WTC Health Registry; however, results from this study are not yet available in the scientific literature. The Administrator will monitor the scientific literature for publication of the results of this study and any other studies that address autoimmune diseases among 9/11-exposed populations.

Dated: October 22, 2015.

John Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2015–27435 Filed 10–27–15; 8:45 am]

BILLING CODE 4163–18–P

Notices

Federal Register

Vol. 80, No. 208

Wednesday, October 28, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE OFFICE OF TRIBAL RELATIONS

Council for Native American Farming and Ranching Meeting

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a forthcoming meeting of The Council for Native American Farming and Ranching (CNAFR), a public advisory committee of the Office of Tribal Relations (OTR). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This will be the first meeting held during fiscal year 2016 and will consist of, but not be limited to: Hearing public comments, update of USDA programs and activities, and discussion of committee priorities. This meeting will be open to the public.

DATES: The meeting will be held on December 8, 2015, 10:00 a.m. to 6:00 p.m., and December 9, 2015, 8:30 a.m. to 6:00 p.m. The meeting will be open to the public on both days. Note that a period for public comment will be held on December 8, 2015, from 2:00 p.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Flamingo Hotel, 3555 S. Las Vegas Boulevard, Las Vegas, Nevada 89109, in the Laughlin II Room.

WRITTEN COMMENTS: Written comments may be submitted to: The CNAFR Contact Person, Dana Richey, Designated Federal Officer, Senior Policy Advisor, Office of the Administrator, USDA/Farm Service Agency, 1400 Independence Ave. SW., Whitten Bldg., 501–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *Dana.Richey@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Dana Richey, Senior Policy Advisor, Office of the Administrator, USDA/Farm Service Agency, 1400 Independence Ave. SW., Whitten Bldg., 501–A, Washington, DC 20250; by Fax: (202) 720–1058 or email: *Dana.Richey@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), USDA established an advisory council for Native American farmers and ranchers. The CNAFR is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the *Keepseagle* v. *Vilsack* settlement agreement that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The CNAFR will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the CNAFR is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; (2) to transmit recommendations concerning any changes to Farm Service Agency regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created by USDA farm loan programs through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned purposes. Equal opportunity practices were considered in all appointments to the CNAFR in accordance with USDA policies. The Secretary selected the members in August 2014.

Interested persons may present views, orally or in writing, on issues relating to agenda topics before the CNAFR. Written submissions may be submitted to the contact person on or before November 30, 2015. Oral presentations from the public will be heard from 2:00 p.m. to 4:00 p.m. on December 8, 2015. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants by November 30, 2015. All oral presentations will be given three (3) to five (5) minutes depending on the number of participants.

The OTR will also make the agenda available to the public via the OTR Web site *http://www.usda.gov/tribalrelations* no later than 10 business days before the meeting and at the meeting. The minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify the Contact Person, at least 10 business days in advance of the meeting.

Leslie Wheelock,

Director, Office of Tribal Relations.

[FR Doc. 2015–27450 Filed 10–27–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

[Docket No.: 150817729–5970–02]

Privacy Act of 1974, Altered System of Records

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of proposed amendment to Privacy Act System of Records: COMMERCE/NOAA–14, Dr. Nancy Foster Scholarship Program.

SUMMARY: The Department of Commerce publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled Notice of Proposed Amendment to COMMERCE/NOAA–14, Dr. Nancy Foster Scholarship Program.

DATES: The system of records becomes effective on October 28, 2015.

ADDRESSES: For a copy of the system of records please mail requests to: Sarah Brabson, NOAA Office of the Chief Information Officer, Room 9856, 1315

East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

Deputy Director of NOAA Education, Educational Partnership Program and Ernest F. Hollings Undergraduate Scholarship Program, Office of Education, 1315 East-West Highway, 10th Floor, Silver Spring, MD 20910–3281.

Administrative Assistant, Mendy Willis, National Marine Fisheries Service Recruitment, Training, Research Program at the University of Florida, P.O. Box 110240, Gainesville, FL 32611.

SUPPLEMENTARY INFORMATION: On September 17, 2015 (80 FR 55829), the Department of Commerce published a notice in the **Federal Register**, entitled ''Notice of Proposed Amendment to Privacy Act System of Records: COMMERCE/NOAA–14, Dr. Nancy Foster Scholarship Program,'' requesting comments on proposed amendments to the system of records. No comments were received in response to the request for comments. By this notice, the Department of Commerce is adopting the proposed changes to the system as final without changes effective October 28, 2015.

Dated: October 22, 2015.

Michael J. Toland,

Department of Commerce, Freedom of Information and Privacy Act Officer.

[FR Doc. 2015–27426 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 17, 2015. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 15–029. Applicant: University of California, Irvine, 816 F Engineering Tower, Irvine, CA 92697–2575. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to determine nanoparticle size, crystal structure, interface and defect structure, surface structure, composition, electronic state, bad-gap, cell structure, magnetic domain structure, 3D-structure and phase transformation of various materials such as metals, ceramics, semiconductors, superconductors, polymers and cells. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 12, 2015.

Docket Number: 15–031. Applicant: University of California, Irvine, 816 F Engineering Tower, Irvine, CA 92697–2575. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to determine nanoparticle size, crystal structure, interface and defect structure, surface structure, composition, electronic state, bad-gap, cell structure, magnetic domain structure, 3D-structure and phase transformation of various materials such as metals, ceramics, semiconductors, superconductors, polymers and cells. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 12, 2015.

Docket Number: 15–035. Applicant: Drexel University, 3141 Chestnut Street, Philadelphia, PA 19104. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to understand the structure of metal alloys, polymers, ceramics, semiconductors and biological structures and relate this to the material performance by obtaining structural and morphological information about the materials using electron diffraction, bright field and dark field imaging. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 20, 2015.

Docket Number: 15–036. Applicant: The Trustees of Princeton University, 701 Carnegie Center, Princeton, NJ 08540. Instrument: Electron Microscope. Manufacturer: FEI Czech Republic s.r.o., Czech Republic. Intended Use: The instrument will be used for a wide range of applications including microstructural and chemical analysis of the first hydration products of cement, using samples prepared by supercritical drying, to elucidate the process of strength development and identify the effects of additives on the kinetics and microstructure, and the structural analysis of non-conducting nanowires used as gas sensors. Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 20, 2015.

Docket Number: 15–037. Applicant: The Trustees of Princeton University, 701 Carnegie Center, Princeton, NJ 08540. Instrument: Electron Microscope. Manufacturer: FEI Electron Optics BV, the Netherlands. Intended Use: The instrument will be used for research such as the interfacial atomic structure of ferromagnetic insulator-topological insulator heterostructures, using FIB prepared thin cross-sections, to elucidate the temperature effect on near-stoichiometric materials which might lead to the development of spintronic devices based on the large anomalous Hall Effect, and the development and fabrication of uniformly dispersed nanoparticle-doped chalcogenide glass. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 30, 2015.

Docket Number: 15–038. Applicant: South Dakota State University, 1400 North Campus Drive, Agricultural and Biosystems Engineering Box 2120, South Dakota State University, Brookings, South Dakota 57007. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to develop techniques for stronger, lighter and cheaper next generation wind turbine blades by characterizing internal and interface structure of nano-fiber enhanced composites, as well as other research. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 3, 2015.

Docket Number: 15–039. Applicant: University of Texas Southwestern Medical Center, 5323 Harry Hines Blvd., Dallas, TX 75390. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended

Use: The instrument will be used to learn how imaged proteins and molecules perform their cellular functions, using cryo-transmission electron microscopy. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 10, 2015.

Docket Number: 15–040. Applicant: UT Battelle, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, Oak Ridge, TN 37831–6138. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to study metals and ceramics for nuclear power applications, using transmission electron microscopy to study the evolution of defects in the crystalline structures of the materials before and after irradiation. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 14, 2015.

Docket Number: 15–041. Applicant: University of Minnesota, 116 Tate Lab of Physics, Minneapolis, MN 55455–0149. Instrument: IVVI Measuring System with Modules. Manufacturer: Delft University of Technology, the Netherlands. Intended Use: The instrument will be used to uncover novel quantum properties of certain semiconductors or superconductors, such as InAs, GaSb or devices combining these with superconductors such As Al and Nb, using high-sensitivity electronic current and voltage measurements. Unique properties of this instrument include modular integration of pA sensitivity ammeter, required to measure very small electrical currents down to several pA, low-noise transimpedance amplifier, required to transform the electrical currents into voltage signals of a few mV that can be measured with conventional laboratory voltmeters, and low-noise digital-to-analogue converter and signal switchboxes. The entire setup is battery-operated and is programmable via an optically-decoupled input to minimize electrical noise interference from electrical power lines or other instruments. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 18, 2015.

Docket Number: 15–042. Applicant: Purdue University, 610 Purdue Mall, West Lafayette, IN 47907. Instrument: SuperK EXTREME EXR–20 20 MHz with SuperK VARIA High 50dB with Power Lock. Manufacturer: NKT Photonics, Denmark. Intended Use: The instrument will be used to image tissue or tissue like materials with high optical scatter using Optical Diffusion Tomography (ODT), providing useful information for the study of biological and chemical processes. The instrument has a wide turning range, which is important for exciting different fluorophores of interest, providing specificity to chemical processes, a short pulse width which is important for performing time-gated measurements, high laser power which is important for obtaining a high SNR from laser light traveling through centimeters of tissue or related scattering medium, and a 20MHz repetition rate which is important for time-gated measurements given the temporal response time of tissue. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 4, 2015.

Docket Number: 15–043. Applicant: New York Structural Biology Center, 89 Convent Ave., New York, NY 10027. Instrument: Electron Microscope. Manufacturer: FEI Co., the Netherlands. Intended Use: The instrument will be used to determine the three-dimensional structure of biological assemblies to determine the manner in which they function and the mechanisms through which they interact with other cellular components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 27, 2015.

Docket Number: 15–045. Applicant: University of Massachusetts Medical School, 55 Lake Avenue North, Worcester, MA 01655. Instrument: Vitrobot. Manufacturer: FEI Electron Optics, B.V., the Netherlands. Intended Use: The instrument will be used to understand the three-dimensional structure of purified proteins and complexes at the atomic level, and how this is related to their function, by freezing them, then examining them in the frozen state in an electron microscope. The instrument can precisely control the humidity at any level, and can also control the temperature of the chamber, which is essential to freeze the proteins and complexes under exactly defined conditions, which is a requirement for all of the studies. The specimen remains in the humidity-controlled environment until the instant of freezing, which is essential to prevent any evaporation of water from the specimen before freezing. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 15, 2015.

Docket Number: 15–046. Applicant: National Institute for Occupational Safety & Health, 1095 Willowdale Rd., Room B104, Morgantown, WV 26505. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to determine the effects of exposing animal lung tissues and cells to particles such as silica and asbestos, nanoparticles such as carbon nanotubes, Titanium Dioxide, graphene and cellulose, in order to make recommendations to industry as to how to protect workers from lung disease. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: September 28, 2015.

Dated: October 20, 2015.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2015–27459 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 23, 2015, the Department of Commerce (Department) published the preliminary results of the changed circumstances review of the antidumping duty order on certain pasta from Italy and preliminarily determined that La Molisana S.p.A. (La Molisana) was not the successor-in-interest to La Molisana Industrie Alimentari, S.p.A. (LMI), a respondent in the investigation and several administrative reviews.[1] We received comments from interested

[1] *See Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 35936 (June 23, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

parties. Based on our analysis, for the final results, the Department continues to find that La Molisana is not the successor-in-interest to LMI.

DATES: *Effective Date:* October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692.

Background

On July 24, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy.[2] The most recently completed administrative review for LMI was for the July 1, 1998 to June 30, 1999 period.[3] Pursuant to Section 129 of the Uruguay Round Agreements Act, the Department recalculated the cash deposit rate for LMI and assigned it a *de minimis* margin.[4]

On June 23, 2014, La Molisana requested a changed circumstances review. On August 12, 2014, the Department initiated this review.[5] On June 23, 2015, the Department published in the **Federal Register** a preliminary finding that La Molisana was not the successor-in-interest to LMI.[6]

On July 2, 2015, La Molisana submitted a case brief.[7] On July 10, 2015, Petitioners submitted a rebuttal brief.[8] A hearing was held on July 15, 2015. The Department extended the deadline for the final results until October 21, 2015.[9]

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta. The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[10]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this changed circumstances review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B8024, of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Changed Circumstances Review

For the *Preliminary Results,* the Department found that La Molisana was not the successor-in-interest to LMI based on the totality of the record evidence.[11] Based on the totality of the circumstances, we preliminarily determined that La Molisana is materially dissimilar to LMI in terms of management, production facilities, and supplier relationships.[12] Based on our analysis of the comments received, the Department continues to find that La Molisana is not the successor-in-interest to LMI pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216.[13]

Instructions to U.S. Customs and Border Protection

As a result of this determination, the Department will instruct U.S. Customs and Border Protection to collect estimated antidumping duties for all shipments of subject merchandise exported by La Molisana and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the 15.45 percent the all-others rate established in the antidumping duty investigation, as modified by the section 129 determination.[14] This cash deposit requirement shall remain in effect until further notice.

Notification

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221.

Dated: October 21, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

APPENDIX

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of Methodology
V. Discussion of Interested Party Comments
- Comment 1: Whether the Department's *Preliminary Results* Are in Accordance With Law and Supported by Record Evidence
- Comment 2: Whether the Department's Analysis of the Management Factor Is Flawed
- Comment 3: Whether the Department's Analysis of Production Facilities Is Flawed
- Comment 4: Whether the Department's Analysis of Supplier Relationships Is Flawed
- Comment 5: Whether the Department's Analysis of Customer Base Is Flawed

[2] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996); *see also Notice of Second Amendment to the Final Determination and Antidumping Duty Order: Certain Pasta From Italy;* 61 FR 42231 (August 14, 1996).

[3] *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000).

[4] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils From Belgium, Steel Concrete Reinforcing Bars From Latvia, Purified Carboxymethylcellulose From Finland, Certain Pasta From Italy, Purified Carboxymethylcellulose From the Netherlands, Stainless Steel Wire Rod From Spain, Granular Polytetrafluoroethylene Resin From Italy, Stainless Steel Sheet and Strip in Coils From Japan,* 77 FR 36257 (June 18, 2012) (*Notice of Section 129 Implementation*).

[5] *See Certain Pasta From Italy: Initiation of Changed Circumstances Review,* 79 FR 47090 (August 12, 2014).

[6] *See Preliminary Results.*

[7] *See* La Molisana's July 2, 2015 Case Brief.

[8] *See* Petitioners' July 10, 2015 Rebuttal Brief.

[9] *See* October 13, 2015 Letter to La Molisana.

[10] For a full description of the scope of the order, *see* the Preliminary Decision Memorandum at 2.

[11] *See Preliminary Results* and accompanying Preliminary Decision Memorandum.

[12] *Id.*

[13] *See* Issues and Decision Memorandum at Comments 1–6.

[14] *See Notice of Implementation of Section 129.*

Comment 6: Whether the Department Failed To Reject Petitioners' Improperly Filed Submission

Recommendation

[FR Doc. 2015–27458 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE281

Marine Fisheries Advisory Committee

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for November 9, 2015, 4–5:30 p.m., Eastern Standard Time.

ADDRESSES: Conference call. Public access is available at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to attend may contact Heidi Lovett, (301) 427–8004; email: *heidi.lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter and other information are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

The Committee is convening to discuss and finalize recommendations on the Draft Habitat Enterprise Strategic Plan for submission to the NOAA Fisheries Assistant Administrator. Other administrative matters may be considered. This agenda is subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett, 301–427–8004 by November 2, 2015.

Dated: October 22, 2015.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2015–27430 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of the Apalachicola, Florida National Estuarine Research Reserve Management Plan revision.

SUMMARY: Notice is hereby given that the Stewardship Division, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the Apalachicola, Florida National Estuarine Research Reserve Management Plan revision. The revised management plan outlines the administrative structure; the research & monitoring, education, training, and stewardship goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The Apalachicola Reserve revised plan will replace the plan approved in 2003.

The Apalachicola Reserve management plan emphasizes a fully integrated approach that links ongoing research, education, training and stewardship programs together. This integrated approach, in coordination with strategic partnerships addresses high priority reserve issues including public use and access, changing land use patterns, the loss of cultural resources, impacts of global and regional processes on ecosystems and communities, engagement with local communities, and changes in reserve habitats. Since the last management plan, the reserve has expanded its monitoring and geographic information system programs; increased staff resources; completed a site profile, established a Coastal Training Program; expanded educational programs; and constructed a new nature center and headquarters complex in the town of Eastpoint that includes laboratories, offices, classrooms, interpretative areas, and are planning interpretive trails.

There is a boundary change associated with this management plan revision that will decrease their total acreage from 246,766 acres to 234,715. The change is attributable to accuracy adjustments based on improved geographic information for the site. The revised management plan will serve as the guiding document for the 234,715 acre Apalachicola Reserve for the next five years. View the Apalachicola, Florida Reserve Management Plan revision at (*http://www.dep.state.fl.us/coastal/sites/apalachicola/publications.htm*).

FOR FURTHER INFORMATION CONTACT: Matt Chasse at (301) 563–1198 or Erica Seiden at (301) 563–1172 of NOAA's National Ocean Service, Stewardship Division, Office for Coastal Management, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: October 20, 2015.

John King,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2015–27425 Filed 10–27–15; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2016–2017 Federal Student Aid Application

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 27, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0101. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Douglas A. Pineda Robles, 202–377–4578.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2016–2017 Federal Student Aid Application.

OMB Control Number: 1845–0001.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 40,135,807.

Total Estimated Number of Annual Burden Hours: 20,560,481.

Abstract: Section 483 of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education ''. . . shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance . . .''.

The determination of need and eligibility are for the following title IV, HEA, federal student financial assistance programs: the Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), and the Federal Perkins Loan Program); the William D. Ford Federal Direct Loan Program; the Teacher Education Assistance for College and Higher Education (TEACH) Grant; and the Iraq and Afghanistan Service Grant.

Federal Student Aid, an office of the U.S. Department of Education (hereafter ''the Department''), subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive title IV, HEA program assistance. The application process involves an applicant's submission of the Free Application for Federal Student Aid (FAFSA®). After submission of the FAFSA, an applicant receives a Student Aid Report (SAR), which is a summary of the data they submitted on the FAFSA. The applicant reviews the SAR, and, if necessary, will make corrections or updates to their submitted FAFSA data. Institutions of higher education listed by the applicant on the FAFSA also receive a summary of processed data submitted on the FAFSA which is called the Institutional Student Information Record (ISIR).

The Department seeks OMB approval of all application components as a single ''collection of information''. The aggregate burden will be accounted for under OMB Control Number 1845–0001. The specific application components, descriptions and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA		
FAFSA on the Web (FOTW)	Online FAFSA that offers applicants a customized experience	Submitted by the applicant via www.fafsa.gov.
FOTW—Renewal	Online FAFSA for applicants who have previously completed the FAFSA.	
FOTW—EZ	Online FAFSA for applicants who qualify for the Simplified Needs Test (SNT) or Automatic Zero (Auto Zero) needs analysis formulas.	
FOTW—EZ Renewal	Online FAFSA for applicants who have previously completed the FAFSA and who qualify for the SNT or Auto Zero needs analysis formulas.	
FAFSA on the Phone (FOTP)	The Federal Student Aid Information Center (FSAIC) representatives assist applicants by filing the FAFSA on their behalf through FOTW.	Submitted through www.fafsa.gov for applicants who call 1–800–4–FED–AID.
FOTP—EZ	FSAIC representatives assist applicants who qualify for the SNT or Auto Zero needs analysis formulas by filing the FAFSA on their behalf through FOTW.	
FAA Access	Online tool that a financial aid administrator (FAA) utilizes to submit a FAFSA.	Submitted through www.faaacess.ed.gov by a FAA on behalf of an applicant.
FAA Access—Renewal	Online tool that a FAA can utilize to submit a Renewal FAFSA.	
FAA Access—EZ	Online tool that a FAA can utilize to submit a FAFSA for applicants who qualify for the SNT or Auto Zero needs analysis formulas.	

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS—Continued

Component	Description	Submission method
FAA Access—EZ Renewal	Online tool that a FAA can utilize to submit a FAFSA for applicants who have previously completed the FAFSA and who qualify for the SNT or Auto Zero needs analysis formulas.	
Electronic Other	This is a submission done by a FAA, on behalf of the applicant, using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
PDF FAFSA or Paper FAFSA	The paper version of the FAFSA printed by the Department for applicants who are unable to access the Internet or the online version of the FAFSA for applicants who can access the Internet but are unable to complete the form using FOTW.	Mailed by the applicant.
Correcting Submitted FAFSA Information and Reviewing FAFSA Information		
FOTW—Corrections	Any applicant who has a Federal Student Aid ID (FSA ID)—regardless of how they originally applied—may make corrections using FOTW Corrections.	Submitted by the applicant via www.fafsa.gov.
Electronic Other—Corrections	With the applicant's permission, corrections can be made by a FAA using the EDE.	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper SAR—This is a SAR and an option for corrections.	The full paper summary that is mailed to paper applicants who did not provide an e-mail address and to applicants whose records were rejected due to critical errors during processing. Applicants can write corrections directly on the paper SAR and mail for processing.	Mailed by the applicant.
FAA Access—Corrections	An institution can use FAA Access to correct the FAFSA	Submitted through www.faaacess.ed.gov by a FAA on behalf of an applicant.
Internal Department Corrections	The Department will submit an applicant's record for system-generated corrections.	There is no burden to the applicants under this correction type as these are system-based corrections.
FSAIC Corrections	Any applicant, with their Data Release Number (DRN), can change the postsecondary institutions listed on their FAFSA or change their address by calling FSAIC.	These changes are made directly in the CPS system by a FSAIC representative.
SAR Electronic (eSAR)	The eSAR is an online version of the SAR that is available on FOTW to all applicants with a PIN. Notifications for the eSAR are sent to students who applied electronically or by paper and provided an e-mail address. These notifications are sent by e-mail and include a secure hyperlink that takes the user to the FOTW site.	Cannot be submitted for processing.

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM), measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and in terms of burden, the average applicant's experience. Key determinants of the ABM include:

□ The total number of applicants that will potentially apply for federal student aid;

□ How the applicant chooses to complete and submit the FAFSA (*e.g.,* by paper or electronically via FOTW®);

□ How the applicant chooses to submit any corrections and/or updates (*e.g.,* the paper SAR or electronically via FOTW Corrections);

□ The type of SAR document the applicant receives (eSAR, SAR acknowledgment, or paper SAR);

□ The formula applied to determine the applicant's expected family contribution (EFC) (full need analysis formula, Simplified Needs Test or Automatic Zero); and

□ The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2016–2017 is based upon two factors—estimating the growth rate of the total enrollment into post-secondary education and applying the growth rate to the FAFSA submissions. The ABM is also based on the application options available to students and parents. The Department accounts for each application component based on web trending tools, survey information, and other Department data sources.

For 2016–2017, the Department is reporting a net burden decrease of −3,522,674 hours. This decrease is considered to be an adjustment in burden hours from the 2015–2016 FAFSA.

Dated: October 23, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–27451 Filed 10–27–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0108]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; High School Longitudinal Study of 2009 (HSLS:09) Second Follow-up Main Study and 2018 Panel Maintenance

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 27, 2015.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0108. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at (202) 502–7411 or by email *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: High School Longitudinal Study of 2009 (HSLS:09) Second Follow-up Main Study and 2018 Panel Maintenance.

OMB Control Number: 1850–0852.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 32,107.

Total Estimated Number of Annual Burden Hours: 24,904.

Abstract: The High School Longitudinal Study of 2009 (HSLS:09) is a nationally representative, longitudinal study of more than 20,000 9th graders in 944 schools in 2009 who are being followed through their secondary and postsecondary years. The study focuses on understanding students' trajectories from the beginning of high school into postsecondary education or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS:09, especially, but not solely, in regards to science, technology, engineering, and math (STEM) courses, majors, and careers. To date, HSLS:09 measured math achievement gains in the first 3 years of high school and, like past studies, surveyed students, their parents, school administrators, school counselors, and teachers. After the initial 2009 data collection, the main study students were re-surveyed in 2012 when most were high school 11th-graders, and again in 2013 when most had just graduated from high school. The second follow-up data collection will take place in early 2016, and will consist of a survey, postsecondary transcript collection, financial aid records collection, and file matching to extant data sources. The second follow-up focuses on postsecondary attendance patterns, field of study selection processes with particular emphasis on STEM, the postsecondary academic and social experience, education financing, employment history including instances of unemployment and underemployment, job characteristics including income and benefits, job values, family formation, and civic engagement. The HSLS:09 data elements are designed to support research that speaks to the underlying dynamics and education processes that influence student achievement, growth, and personal development over time. This request is to conduct the HSLS:09 Second Follow-up Main Study interviews in 2016, the transcript and student financial aid records collections in 2017, and panel maintenance activities in 2018.

Dated: October 23, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–27417 Filed 10–27–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–2265–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance filing Regarding Trading Hubs and Resource Hubs to be effective 9/23/2015.

Filed Date: 10/22/15.

Accession Number: 20151022–5195.

Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–126–000.

Applicants: Southwest Power Pool, Inc.

Description: Petition for Waiver of Tariff Provisions and Motion for Expedited Action and Shortened Comment Period of Southwest Power Pool, Inc.

Filed Date: 10/20/15.

Accession Number: 20151020–5261.

Comments Due: 5 p.m. ET 10/30/15.

Docket Numbers: ER16–136–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA No. 3253, Queue No. W4–053 to be effective 10/22/2015.

Filed Date: 10/22/15.

Accession Number: 20151022–5145.

Comments Due: 5 p.m. ET 11/12/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27409 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–131–000]

Heber Geothermal Company LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Heber Geothermal Company LLC.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 10, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27410 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–6–000]

Texas Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on October 13, 2015, Texas Gas Transmission, LLC (Texas Gas), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046 filed a prior notice request pursuant to sections 157.205(b), 157.208 (c) and 157.210 of the Commission's regulations under the Natural Gas Act for authorization to replace its existing 12,000 horsepower (HP) Solar Mars 100 T–14000 turbine unit with a new 13,290 HP Solar Mars 100–T15000S turbine unit as well as the installation and modification of station piping, valves and other appurtenant, auxiliary facilities at Texas Gas' existing Hardinsburg Compressor Station located in Breckinridge County, Kentucky (Hardinsburg Replacement Project). Texas Gas states that the Hardinsburg Replacement Project will not result in a reduction or abandonment of service through the facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Michael E. McMahon, Sr. Vice President and General Counsel, Texas Gas Transmission, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, at phone (713) 479–8059 or facsimile (866) 459–7336, or via email to *Mike.McMahon@bwpmlp.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and

the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27400 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–1–000]

Bayou Bridge Pipeline, LLC; Notice of Petition for Declaratory Order

Take notice that on October 19, 2015, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2015), Bayou Bridge Pipeline, LLC (Petitioner), filed a petition for a declaratory order seeking approval of the specified rate structure, terms of service, and prorationing methodology for the proposed Bayou Bridge pipeline project (the ''Bayou Bridge Project''). Petitioner states that the Bayou Bridge Project is intended to provide cost-effective crude oil pipeline transportation from the crude oil terminals, storage, and transportation hub in the vicinity of Nederland, Texas, to refineries and markets in Louisiana, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 19, 2015.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27403 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6643–015]

Lee R. and A. Leon Thayn; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exemption.

b. *Project No:* 6643–015.

c. *Date Filed:* October 19, 2015.

d. *Applicant:* Lee R. and A. Leon Thayn.

e. *Name of Projects:* Thayn Project.

f. *Location:* The project is located on the Green River, along the boundary of Grand and Emory Counties, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Lee R. Thayn, P.O. Box 447, Green River, UT 84525, (435) 564–3325; or Rick Kaster, 4860 N. 115 East, Buhl, ID 83316, (208) 731–9975.

i. *FERC Contact:* B. Peter Yarrington, (202) 502–6129 or *peter.yarrington@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 15 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, or comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–6643–015) on any comments, motions to intervene, or protests filed.

k. Description of Request: The applicant proposes replacement of the existing rock and timber diversion dam with a new structure primarily consisting of sheet pile walls, structural fill material, and a concrete cap. The existing diversion dam, which is over

100 years old, has undergone significant deterioration, most recently during a high-flow event in 2011. The proposed new diversion dam was designed by the Green River Conservation District and the exemptee in consultation with federal and state resource agencies to ensure a continued supply of agricultural water for local irrigators, and to improve public safety and fish passage. The work would not result in any significant changes to water levels or project operation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1 (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 21, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27405 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14703–000]

Empire State Hydro 302, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 25, 2015, Empire State Hydro 302, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Braendly Dam Hydroelectric Project to be located on Fishkill River in Dutchess County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would redevelop an abandoned project and consist of: (1) An existing 130-foot-long, 18-foot-high cut stone with a concrete cap dam creating a reservoir with a surface area of approximately 3 acres and a storage capacity of 15 acre-feet at a normal water surface elevation of 119.5 feet mean sea level; (2) a new 6-foot-diameter, 300-foot-long steel penstock; (3) a new 50-foot-long by 35-foot-wide powerhouse containing two Kaplan turbine units with a rated capacity of 450 kilowatts each; and (4) a new 12.7-kilovolt, 500-foot-long transmission line. The project would have an annual generation of 3,200 megawatt-hours.

Applicant Contact: Mark Boumansour, Empire State Hydro 302, LLC, 1401 Walnut Street, Suite 220, Boulder, CO 80302; phone: 303–440–3378.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number P–14703–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14703) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27407 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–7–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

Take notice that on October 15, 2015, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street Williamsville, New York 14221–5887, filed in Docket No. CP16–7–000 a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) as amended, requesting authorization to abandon an injection/withdrawal well (Well 5596) at its Henderson Storage Field in Mercer County, Pennsylvania. National Fuel avers that Well 5596 is leaking from the production casing and cannot be economically repaired. National Fuel asserts that with the abandonment of the well, the associated well line will no longer be required and thus requests authorization to abandon in place the approximately 775 feet of 4-inch-diameter pipe. National Fuel states that it will replace an existing culvert crossing on an access road as part of the abandonment activities. National Fuel states that the proposed abandonment of Well 5596 and the associated well line will have no impact on National Fuel's existing customers or storage operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Kenneth E. Webster, Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York, 14221–5887, by telephone at (716) 857–7067, by facsimile at (716) 857–7206, or by email at *websterk@natfuel.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27401 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–11–000.
Applicants: Golden Hills Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Golden Hills Wind, LLC.
Filed Date: 10/21/15.
Accession Number: 20151021–5241.
Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: EG16–12–000.
Applicants: Carousel Wind Farm, LLC.
Description: Notice of Self-certification of Exempt Wholesale Generator Status of Carousel Wind Farm, LLC.
Filed Date: 10/21/15.
Accession Number: 20151021–5242.
Comments Due: 5 p.m. ET 11/12/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1819–013; ER10–1820–016; ER10–1818–011; ER10–1817–012.
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company.
Description: Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 10/21/15.
Accession Number: 20151021–5213.
Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–133–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement No. 4280; NQ133 to be effective 10/14/2015.
Filed Date: 10/22/15.
Accession Number: 20151022–5102.
Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–134–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original Service Agreement Nos. 4281,

4282; Queue No. AA1–100 to be effective 9/23/2015.

Filed Date: 10/22/15.

Accession Number: 20151022–5117.

Comments Due: 5 p.m. ET 11/12/15.

Docket Numbers: ER16–135–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1637R2 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 10/1/2015.

Filed Date: 10/22/15.

Accession Number: 20151022–5143.

Comments Due: 5 p.m. ET 11/12/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 22, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–27408 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12629–004]

Milltown Hydroelectric, LLC, Green Power USA, LLC; Notice of Transfer of Exemption

1. By letter filed October 6, 2015, Milltown Hydroelectric, LLC and Green Power USA, LLC informed the Commission that the exemption from licensing for the Corriveau Project, No. 12629, originally issued October 24, 2006,[1] has been transferred to Green Power USA, LLC. The project is located on the Swift River in Oxford County, Maine. The transfer of an exemption does not require Commission approval.

2. Green Power USA, LLC is now the exemptee of the Corriveau Project, No. 12629. All correspondence should be forwarded to: Ms. Nancy Lausier, Green Power USA, LLC, 24 Standpipe Road, Mechanic Falls, Maine 04256.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27406 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 117 FERC ¶ 62,059, Order Granting Exemption from Licensing (5 MW or Less (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation

Member Representatives Committee and Board of Trustees Meetings

Board of Trustees Corporate Governance and Human Resources Committee, Finance and Audit Committee, Compliance Committee, and

Standards Oversight and Technology Committee Meetings

The Westin Buckhead, 3391 Peachtree Road NE., Atlanta, GA 30326.

November 4 (7:30 a.m.–5:00 p.m.) and November 5 (8:30 a.m.–12:00 p.m.), 2015.

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR15–12, North American Electric Reliability Corporation

Docket No. RR15–16, North American Electric Reliability Corporation

Docket No. RD15–5, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: October 21, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27402 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–064]

Boott Hydropower, Inc.; Eldred L. Field Hydro Facility Trust; Notice of Application for Partial Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

On October 9, 2015, Boott Hydropower, Inc., co-licensee and Eldred L. Field Hydro Facility Trust, co-licensee (transferors) jointly filed an application for the partial transfer of the license of the Lowell Hydroelectric Project No. 2790 to remove as co-licensee Eldred L. Hydro Facility Trust and to convert Boott Hydropower, Inc. to an LLC. The project is located on the Merrimack River in Middlesex County, Massachusetts.

Boott Hydropower, Inc. is a subsidiary of Enel Green Power North America, Inc. As part of an internal reorganization Boott Hydropower, Inc. intends to convert to an LLC, (Boott Hydropower, LLC). Boott Hydropower, Inc. seeks Commission approval to transfer the license for the Lowell Hydroelectric Project to Boott Hydropower, LLC as sole licensee in association with the conversion, effective on the date Boott Hydropower, LLC submits certified copies of its articles of conversion, plan of conversion, and limited liability company operating agreement to the Commission.

Applicant Contact: For *Applicants:* Ms. Megan Beauregard, Senior Associate General Counsel, Enel Green Power North America, Inc., One Tech Drive, Suite 220, Andover, MA 01810, telephone: 978–681–1900, email: *megan.beauregard@enel.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735.

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, comments, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please

send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2790–064.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27404 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–552–000]

Northern Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Gaines County Crossover Compressor Station and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Gaines County Crossover Compressor Station (Project) involving construction and operation of facilities by Northern Natural Gas Company (Northern) in Gaines County, Texas. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 23, 2015.

If you sent comments on this Project to the Commission before the opening of this docket on September 9, 2015, you will need to file those comments in Docket No. CP15–552–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Northern representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Northern has provided landowners with a fact sheet prepared by the FERC entitled *''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov/resources/guides/gas/gas.pdf*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (CP15–552–000) with your submission:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Northern proposes to construct and operate a new compressor station in Gaines County, Texas. The Project would include two new natural gas-fired turbine compressor units rated at approximately 18,089 horsepower (HP) and would deliver about 210 million standard cubic feet of natural gas per day to supply natural gas for electrical power plants.

If approved as proposed, the Project would include installation of two units: (1) Solar Taurus 70–10802S with approximately 11,152 HP; and (2) Solar Taurus 60–7302S with approximately 6,937 HP. The suction side of the compressor station would be connected to the existing 30-inch-diameter Spraberry to Plains pipeline. The station would discharge to the existing 30-inch-diameter Kermit to Beaver pipeline. The proposed Project would also include the installation of two compressor buildings, a control building, an auxiliary building, a septic system and associated above-grade and below-grade piping, and valves and instrumentation.

The general location of the proposed Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed Project facilities and temporary workspace would disturb approximately 27.8 acres of land. The total acreage maintained for permanent operation of the compressor station would be approximately 20 acres of land. Northern would acquire an approximately 20-acre site for the new compressor station and access road. The predominant land use that would be impacted by the proposed Project is agricultural and fallow cropland.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–552). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27398 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–3–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on October 8, 2015, Texas Eastern Transmission, LP (Texas Eastern) 5400 Westheimer Court, Houston, Texas 77056–5310, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations seeking authorization to: (1) Construct, install, own, operate, and maintain approximately 15.8 miles of 36-inch diameter pipeline at three locations in Ohio; (2) install a new 16,875 horsepower compressor unit at an existing compressor station in Tompkinsville, Kentucky; and (3) modify 12 existing compressor stations to allow for reverse flow capabilities in various states. These facilities are more fully described herein and comprise the Access South Project, Adair Southwest Project and the Lebanon Extension Project (Projects), all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Steven Hellman, Associate General Counsel, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or call (713) 627–5215, or fax (713) 386–4405, or by email *sehellman@spectraenergy.com.*

On March 31, 2015, Commission staff granted Texas Eastern's request to use the pre-filing process and assigned Docket No. PF15–17–000 to staff activities involving the Projects. Now, as of the filing of this application on October 8, 2015, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP16–3–000 as noted in the caption of this Notice.

Texas Eastern states the Projects will enable it to transport up to an additional 622,000 dekatherms per day (Dth/d) of natural gas on Texas Eastern's existing mainline facilities from a receipt point in Uniontown, Pennsylvania. Specifically, the Access South Project would provide up to 320,000 Dth/d of capacity to transport supply from a receipt point in Uniontown, Pennsylvania to delivery points in Texas Eastern's Access Area Zone ELA and Market Zone M1 in Attala County, Mississippi. The Adair Southwest Project would provide up to 200,000 Dth/d of capacity to transport supply from a receipt point in Uniontown, Pennsylvania to delivery points in Texas Eastern's Market Zone M2 in Adair County, Kentucky. Finally, the Lebanon Extension Project would provide up to 102,000 Dth/d of capacity to transport supply from the Uniontown, Pennsylvania receipt point to delivery points in Market Zone M2 in or near Lebanon, Ohio. Texas Eastern has executed Precedent Agreements for long-term firm transportation service for the total capacity of all three Projects and has made standalone contractual commitments with the customers of each Project to construct the facilities required to provide service under each of the Projects, as necessary.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: November 12, 2015.

Dated: October 22, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27399 Filed 10–27–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2015–0606, FRL–9936–30–OSWER]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Hazardous Waste Facility Standards.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), General Hazardous Waste Facility Standards (EPA ICR No. 1571.11, OMB Control No. 2050–0120) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 29, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before December 28, 2015.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–RCRA–2015–0606, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Norma Abdul-Malik, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; email address: *abdul-malik.norma@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in 40 CFR parts 264 and 265. The collection of this information enables the EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA.

Form Numbers: None.

Respondents/affected entities: Business and other for-profit, as well as State, Local, and Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA section 3004).

Estimated number of respondents: 1,872.

Frequency of response: On occasion.

Total estimated burden: 672,417 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $38,978,384 which includes $38,444,859 annualized labor costs and $535,525 annualized capital or O&M costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: October 19, 2015.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2015–27465 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0528; FRL–9936–32–ORD]

Board of Scientific Counselors Safe and Sustainable Water Resources Subcommittee; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference meeting and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency, Office of Research and Development (ORD), gives notice of a public teleconference meeting of the Board of Scientific Counselors (BOSC) Safe and Sustainable Water Resources Subcommittee.

DATES: The teleconference meeting will be held on Friday, November 13, 2015, from 12:00 p.m. to 2:00 p.m., Eastern Time. The teleconference may adjourn early if all business is finished or may adjourn late if additional time is needed. Any member of the public interested in receiving a draft agenda, attending the teleconference, or making a presentation during the teleconference may contact Cindy Roberts, Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below. Requests will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the meeting will be by teleconference only; meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Cindy Roberts via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Cindy Roberts, Designated Federal Officer, Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460; by telephone at 202–564–1999; or via email at *roberts.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: The teleconference is open to the public. Any member of the public interested in receiving a draft agenda, attending the teleconference, or making a presentation during the teleconference may contact Cindy Roberts via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. Teleconference deliberations will focus on draft report findings and recommendations from an August 2015 meeting. Documents from the August meeting are available for viewing and downloading at: *http://www2.epa.gov/bosc/safe-and-sustainable-water-resources-bosc-subcommittee.* Proposed agenda items for the teleconference include, but are not limited to, the following: presentation and discussion of the subcommittee's draft responses to the charge questions and approval of the final draft letter report prior to its submission to the BOSC Executive Committee.

Oral Statements: In general, each individual or groups making remarks during the public comment period will be limited to five (5) minutes. To accommodate the number of people who want to address the BOSC Safe and Sustainable Water Resources Subcommittee, only one representative of a particular community, organization, or group will be allowed to speak.

Written Statements: Written comments for the meeting will be accepted up to one business day before the meeting, and will be included in the materials distributed to the BOSC Safe and Sustainable Water Resources Subcommittee prior to the teleconference. Written comments should be sent to Cindy Roberts, Environmental Protection Agency, via email at *roberts.cindy@epa.gov* or by mail to 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460; or submitted through regulations.gov, Docket ID No. EPA–HQ–ORD–2015–0467.

Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Cindy Roberts at 202–564–1999 or via email at *roberts.cindy@epa.gov.* To request special accommodations for a disability, please contact Cindy Roberts at least ten days prior to the teleconference to give EPA sufficient time to process your request.

Dated: October 22, 2015.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2015–27468 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0435; FRL–9935–79]

Agency Information Collection Activities; Proposed Renewal of the Collection under OMB Control No. 2070–0030, EPA ICR No. 0795.15; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Notification of Chemical Exports—TSCA Section 12(b)'' and identified by EPA ICR No. 0795.15 and OMB Control No. 2070–0030, represents the renewal of an existing ICR that is scheduled to expire on August 31, 2016. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before December 28, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0435, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Mike Mattheisen, Chemical Control Division (7405–M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3077; email address: *mattheisen.mike@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to Paperwork Reduction Act (PRA) section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Notification of Chemical Exports—TSCA Section 12(b).

ICR number: EPA ICR No. 0795.15.

OMB control number: OMB Control No. 2070–0030.

ICR status: This ICR is currently scheduled to expire on August 31, 2016. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 12(b) of the Toxic Substances Control Act (TSCA) requires any person who exports or intends to export a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 to notify EPA of such export or intent to export. This requirement is described in more detail at 40 CFR part 707, subpart D. Upon receipt of notification, EPA advises the government of the importing country of the U.S. regulatory action that required the notification with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country. This information collection addresses the burden associated with industry reporting of export notifications.

Responses to the collection of information are mandatory (see 40 CFR part 707, subpart D). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.3 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are companies that export chemical substances or mixtures from the United States to foreign countries.

Estimated total number of potential respondents: 240.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 12.9.

Estimated total annual burden hours: 4,032 hours.

Estimated total annual costs: $278,118. This includes an estimated burden cost of $278,118 and an estimated cost of $0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 7 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's correction of errors in the previous submission. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 19, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–27470 Filed 10–27–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0546 and 3060–0980]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 28, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0546.

Title: Section 76.59 Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 180 respondents and 200 responses.

Estimated Time per Response: 0.5 to 40 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Total Annual Burden: 1,486 hours.

Total Annual Costs: $1,387,950.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On September 2, 2015, the Commission released a Report and Order (Order), FCC 15–111, in MB Docket No. 15–71, adopting satellite television market modification rules to implement Section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR). The STELAR amended the Communications Act and the Copyright Act to give the Commission authority to modify a commercial television broadcast station's local television market—defined by The Nielsen Company's Designated Market Area (DMA) in which it is located—to include additional communities or exclude communities for purposes of better effectuating satellite carriage rights. The Commission previously had the authority to modify a station's market only in the cable carriage context. Market modification allows the Commission to modify the local television market of a particular commercial television broadcast station to enable commercial television stations, cable operators and satellite carriers to better serve the interests of local communities. Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming. Section 338(l) of the Communications Act (the satellite market modification provision) and Section 614(h)(1)(C) of the Communications Act (the corresponding cable provision) permit the Commission to add communities to or delete communities from a station's local television market following a written request. Furthermore, the Commission may determine that particular communities are part of more than one television market.

Section 76.59(a) of the Commission's Rules authorizes the filing of market modification petitions and governs who may file such a petition. With respect to cable market modification petitions, a commercial TV broadcast station and cable system operator may file a market modification petition to modify the local television market of a particular commercial television broadcast station for purposes of cable carriage rights. With respect to satellite market modification petitions, a commercial TV broadcast stations, satellite carrier and county governmental entity (such as a county board, council, commission or other equivalent subdivision) may file a market modification petition to modify the local television market of a particular commercial television broadcast station for purposes of satellite carriage rights. Section 76.59(b) of the Commission's Rules requires that market modification petitions and responsive pleadings (*e.g.,* oppositions, comments, reply comments) must be submitted in accordance with the procedures for filing Special Relief petitions in Section 76.7 of the rules. Section 76.59(b) of the Commission's Rules requires petitioners (*e.g.,* commercial TV broadcast stations, cable system operators, satellite carriers and county governments) to include the specific evidence in support of market modification petitions.

Section 338(l)(3) of the Communications Act provides that ''[a] market determination . . . shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.'' If a satellite carrier opposes a market modification petition because the resulting carriage would be technically or economically infeasible pursuant to Section 338(l)(3), the carrier must provide specific evidence in its opposition or response to a pre-filing coordination request (see below) to demonstrate its claim of infeasibility. If the satellite carrier is claiming infeasibility based on insufficient spot beam coverage, then the carrier may instead provide a detailed certification submitted under penalty of perjury. Although the Commission will not require satellite carriers to provide supporting documentation as part of their certification, the Commission may decide to look behind any certification and require supporting documentation when it deems it appropriate, such as when there is evidence that the certification may be inaccurate. In the event that the Commission requires supporting documentation, it will require a satellite carrier to provide its ''satellite link budget'' calculations that were created for the new community. Because the Commission may determine in a given case that supporting documentation should be provided to support a detailed certification, satellite carriers are required to retain such ''satellite link budget'' information in the event that the Commission determines further review by the Commission is necessary. Satellite carriers must retain such information throughout the pendency of Commission or judicial proceedings involving the certification and any related market modification petition. If satellite carriers have concerns about providing proprietary and confidential information underlying their analysis, they may request confidentiality.

The Report and Order establishes a ''pre-filing coordination'' process that will allow a prospective petitioner for market modification (*i.e.,* broadcaster or county government), at its option, to request/obtain a certification from a satellite carrier about whether or not (and to what extent) carriage resulting from a contemplated market modification is technically and economically feasible for such carrier before the prospective petitioner undertakes the time and expense of preparing and filing a satellite market modification petition. To initiate this process, a prospective petitioner may make a request in writing to a satellite carrier for the carrier to provide the certification about the feasibility or infeasibility of carriage. A satellite carrier must respond to this request within a reasonable amount of time by providing a feasibility certification to the prospective petitioner. A satellite carrier must also file a copy of the correspondence and feasibility certification it provides to the prospective petitioner in this docket electronically via ECFS so that the Media Bureau can track these certifications and monitor carrier response time. If the carrier is claiming

spot beam coverage infeasibility, then the certification provided by the carrier must be the same type of detailed certification that would be required in response to a market modification petition. For any other claim of infeasibility, the carrier's feasibility certification must explain in detail the basis of such infeasibility and must be prepared to provide documentation in support of its claim, in the event the prospective petitioner decides to seek a Commission determination about the validity of the carrier's claim. If carriage is feasible, a statement to that effect must be provided in the certification. To obtain a Commission determination about the validity of the carrier's claim of infeasibility, a prospective petitioner must either file a (separate) petition for special relief or its market modification petition.

OMB Control Number: 3060–0980.

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues, 47 CFR Section 76.66.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,300 respondents; 11,978 responses.

Estimated Time per Response: 1 hour to 5 hours.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement; Once every three years reporting requirement; Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 325, 338, 339 and 340.

Total Annual Burden: 12,186 hours.

Total Annual Cost: $24,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On September 2, 2015, the Commission released a *Report and Order (Order),* FCC 15–111, in MB Docket No. 15–71, adopting satellite television market modification rules to implement Section 102 of the Satellite Television Extension and Localism Act (STELA) Reauthorization Act of 2014 (STELAR). With respect to this collection, the Order amended Section 76.66 of the Commission's Rules by adding a new paragraph (d)(6) that addresses satellite carriage after a market modification is granted by the Commission.

47 CFR Section 76.66(d)(6) addresses satellite carriage after a market modification is granted by the Commission. The rule states that television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements of 47 CFR Section 76.66(d)(1).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015–27391 Filed 10–27–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0741]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 28, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0741.

Title: Technology Transitions, GN Docket No. 13–5, et al.

Form Number(s): N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,357 respondents; 573,767 responses.

Estimated Time per Response: 0.5–8 hours.

Frequency of Response: On occasion reporting requirements; recordkeeping; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 222 and 251.

Total Annual Burden: 575,840 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 251 of the Communications Act of 1934, as amended, *47 U.S.C. 251*, is designed to accelerate private sector development and deployment of telecommunications technologies and services by spurring competition. Section 222(e) is also designed to spur competition by

prescribing requirements for the sharing of subscriber list information. These OMB collections are designed to help implement certain provisions of *sections 222(e) and 251*, and to eliminate operational barriers to competition in the telecommunications services market. Specifically, these OMB collections will be used to implement (1) local exchange carriers' (''LECs'') obligations to provide their competitors with dialing parity and non-discriminatory access to certain services and functionalities; (2) incumbent local exchange carriers' (''ILECs'') duty to make network information disclosures; and (3) numbering administration. The Commission estimates that the total annual burden of the entire collection, as revised, is 575,840 hours. This revision relates to a change in one of many components of the currently approved collection—specifically, certain reporting, recordkeeping and/or third party disclosure requirements under section 251(c)(5). In August 2015, the Commission adopted new rules concerning certain information collection requirements implemented under section 251(c)(5) of the Act, pertaining to network change disclosures. The changes to those rules apply specifically to a certain subset of network change disclosures, namely notices of planned copper retirements. The changes are designed to provide interconnecting entities adequate time to prepare their networks for the planned copper retirements and to ensure that consumers are able to make informed choices. There is also a change in the number of potential respondents to the rules promulgated under that section. The number of respondents as to the information collection requirements implemented under section 251(c)(5) of the Act, has changed from 1,300 to 750, a decrease of 550 respondents from the previous submission. Under section 251(f)(1) of the Act, rural telephone companies are exempt from the requirements of section 251(c) ''until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines . . . that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 . . . .'' The Commission has determined that the number of potential respondents set forth in the previous submission inadvertently failed to take this exemption into account. There are 1,429 ILECs nationwide. Of those, 87 are non-rural ILECs and 1,342 are rural ILECs. The Commission estimates that of the 1,342 rural ILECs, 679 are entitled to the exemption and 663 are not entitled to the exemption and thus must comply with rules promulgated under section 251(c) of the Act, including the rules that are the subject of this information collection.

Thus, the Commission estimates that there are 87 (non-rural) + 663 (rural) = 750 potential respondents. The Commission estimates that the revision does not result in any additional outlays of funds for hiring outside contractors or procuring equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–27338 Filed 10–27–15; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE & TIME: Monday, November 2, 2015 At 4:00 p.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This hearing will be open to the public.

ITEM TO BE DISCUSSED: Audit Hearing: Gary Johnson 2012, Inc.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2015–27618 Filed 10–26–15; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011383–047.

Title: Venezuelan Discussion Agreement.

Parties: Hamburg-Süd; King Ocean Services Limited, Inc.; and Seaboard Marine Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment deletes Seafreight Line, Ltd. as a party to the Agreement.

Agreement No.: 012231–001.

Title: Seaboard/Hybur Ltd. Space Charter Agreement.

Parties: Seaboard Marine Ltd. and Hybur Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment would update provisions related to space provided to Seaboard by Hybur.

Agreement No.: 201143–012.

Title: West Coast MTO Agreement.

Parties: APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Seaside Transportation Service LLC; Trapac, Inc.; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; SSA Terminals, LLC; and SSA Terminal (Long Beach), LLC.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment would add Everport Terminal Services, Inc. as a party to the Agreement.

Agreement No.: 201202–007.

Title: Oakland MTO Agreement.

Parties: Ports America Outer Harbor Terminal, LLC; Seaside Transportation Service LLC; SSA Terminals, LLC; SSA Terminals (Oakland), LLC; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW., Washington, DC 20036.

Synopsis: The amendment would add Everport Terminal Services, Inc. as a party to the Agreement.

By order of the Federal Maritime Commission.

Dated: October 23, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015–27455 Filed 10–27–15; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend for an additional three years the current Paperwork Reduction Act (''PRA'') clearance [1] for the FTC's shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the disclosure requirements in subpart N of Regulation V (''Rule''). That clearance expires on December 31, 2015.

DATES: Comments must be filed by November 27, 2015.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Subpart N of Regulation V, PRA Comment, P125403,'' on your comment. File your comment online at *https://ftcpublic.commentworks.com/ftc/regulationVsubpartNpra2* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Ryan Mehm, Attorney, Bureau of Consumer Protection, (202) 326–2918, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On August 6, 2015, the FTC sought public comment on the information collection requirements associated with subpart N (80 FR 46988). No relevant comments were received. That Notice details staff's methodology behind the estimates restated here in summary form, while also providing an overview of the Rule and the underlying authorizing statute.

Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment on:

(1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

As before, the Commission specifically seeks more recent estimates of the number of requests consumers are making for free annual file disclosures. In addition to data on the number of requests, data on how the number of requests has changed over time, and how these requests are being received—by Internet, phone, or by mail—would be most helpful toward refining the FTC's burden estimates.

The following summarizes the FTC net burden estimates [2] resulting from the analysis detailed in the August 6, 2015 Notice.

1. Annual File Disclosures Provided Through the Internet:
   a. 8,320 hours
   b. $545,126 in labor costs to negotiate or renegotiate outsourced service contracts
2. Annual File Disclosures Requested Over the Telephone:
   a. 6,240 hours
   b. $408,845 in labor costs to negotiate or renegotiate outsourced service contracts
3. Annual File Disclosures Requiring Processing by Mail:
   a. 347,083 hours
   b. $5,747,694 in labor costs
4. Instructions to Consumers:
   a. 34,708 hours
   b. $574,764 in labor costs
5. Non-labor/capital costs: $11,931,500 (costs paid to third-party contractors to phone and internet capacity to handle increasing consumer request volume)
6. Net Burden to FTC After 50:50 Split with the CFPB
   a. 198,176 hours
   b. $3,638,215 associated labor costs
   c. $5,965,750 non-labor/capital costs

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 27, 2015. Write ''Subpart N of Regulation V, PRA Comment, P125403'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[3] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/regulationVsubpartNpra2,* by following the instructions on the Web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

[1] OMB Control No. 3084–0137.

[2] Because the FTC shares enforcement authority with the CFPB for subpart N, the two agencies are splitting between them the related estimate of PRA burden for firms under their co-enforcement jurisdiction.

[3] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

If you file your comment on paper, write ''Subpart N of Regulation V, PRA Comment, P125403,'' on your comment and on the envelope. You can mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 27, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2015–27446 Filed 10–27–15; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PMAB–2015–02; Docket No. 2015–0002; Sequence 29]

The President's Management Advisory Board (PMAB); Notification of Upcoming Public Advisory Meeting

AGENCY: Office of Executive Councils, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: The President's Management Advisory Board (PMAB), a Federal Advisory Committee established in accordance with the Federal Advisory Committee Act (FACA), will hold a public meeting on Monday, November 16, 2015.

DATES: *Effective:* October 28, 2015.

Meeting date: The meeting will be held on Monday, November 16, 2015, beginning at 9:00 a.m. Eastern Standard Time (EST), ending no later than 1:00 p.m., EST.

ADDRESSES: The meeting will be held at the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Golson, Designated Federal Officer, President's Management Advisory Board, Office of Executive Councils, GSA, 1800 F Street NW., Washington, DC 20006, at 202–969–7989, or via email at *brad.golson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The PMAB was established to provide independent advice and recommendations to the President and the President's Management Council on a wide range of issues related to the development of effective strategies for the implementation of best business practices to improve Federal Government management and operation.

Agenda

The main purpose of this meeting is to obtain recommendations from PMAB members on effective implementation of the FedStat process used by the Office of Management and Budget (OMB), to assess effective management practices, and of the Federal Information Technology Acquisition Reform Act (FITARA), which was passed by Congress during the 113th session of the United Sates Congress.

Meeting Access

The PMAB will convene its meeting in the Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW., Washington, DC 20504. Due to security, there will be no public admittance to the Eisenhower Building to attend the meeting. However, the meeting is open to the public and may be viewed at *http://www.whitehouse.gov/live.* Members of the public wishing to comment on the discussion or topics outlined in the Agenda should follow the steps detailed in Procedures for Providing Public Comments below.

Availability of Materials for the Meeting

Please see the PMAB Web site: (*http://www.whitehouse.gov/administration/advisory-boards/pmab*) for any materials available in advance of the meeting, and for meeting minutes that will be made available after the meeting. Detailed meeting minutes will be posted within 90 days of the meeting.

Procedures for Providing Public Comments

In general, public statements will be posted on the PMAB Web site (*http://www.whitehouse.gov/administration/advisory-boards/pmab*). Non-electronic documents will be made available for public inspection and copying in PMAB offices at GSA, 1800 F Street NW., Washington, DC 20405, on official business days between the hours of 10 a.m., and 5 p.m., EST. You can make an appointment to inspect statements by telephoning 202–695–9554. All statements, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. Any statements submitted in connection with the PMAB meeting will be made available to the public under the provisions of the Federal Advisory Committee Act.

The public is invited to submit written statements for this meeting until 12:30 p.m., EST, on Friday, November 13, by either of the following methods: *Electronic or Paper Statements:* Submit electronic statements to Mr. Golson, Designated Federal Officer at *brad.golson@gsa.gov;* or send paper statements in triplicate to Mr. Golson at the PMAB GSA address above.

Dated: October 21, 2015.

Christine Harada,

Associate Administrator, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2015–27368 Filed 10–27–15; 8:45 am]

BILLING CODE 6820–BR–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–00XX; Docket No. 2015–0055; Sequence 49]

Information Collection; Payment to Small Business Subcontractors

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of notice.

SUMMARY: The notice, OMB Control No. 9000–00XX, Payment to Small Business

Subcontractors, published in the **Federal Register**, is being withdrawn and is no longer accepting comments.

DATES: *Effective:* October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, GSA, at 202–501–1448, or via email to *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The notice, published in the **Federal Register** at 80 FR 60383, on October 6, 2015, requesting comments regarding a new information collection, 9000–00XX; Payment to Small Business Subcontractors, is being withdrawn. The notice is being withdrawn because it is associated with a rule which is still in process, and has not been published. Comments are no longer being sought at this time; however, the public will have a chance to comment once the rule is published.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–27432 Filed 10–27–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0840]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research and Tool Development (OMB Control No. 0920–0840, Expiration 02/29/2016)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) requests a three-year approval and extension of the ''Formative Research and Tool Development'' generic information collection plan. This information collection request is designed to allow NCHHSTP to conduct formative research information collection activities used to inform many aspects of surveillance, communications, health promotion, and research project development for NCHHSTP's 4 priority diseases (HIV/AIDS, sexually transmitted diseases/infections (STD/STI), viral hepatitis, tuberculosis elimination and the Division of School and Adolescent Heath (DASH).

Formative research is the basis for developing effective strategies including communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics—interests, behaviors and needs—of target populations that influence their decisions and actions.

Formative research is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which a public health intervention is being or will be implemented and helps the project staff understand the interests, attributes and needs of different populations and persons in that community. Formative research is research that occurs before a program is designed and implemented, or while a program is being conducted.

NCHHSTP formative research is necessary for developing new programs or adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S, as well as for school and adolescent health.

CDC conducts formative research to develop public-sensitive communication messages and user friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the development of a product.

Products from these formative research studies will be used for prevention of HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis. Findings from these studies may also be presented as evidence to disease-specific National Advisory Committees, to support revisions to recommended prevention and intervention methods, as well as new recommendations.

Much of CDC's health communication takes place within campaigns that have fairly lengthy planning periods—timeframes that accommodate the standard Federal process for approving data collections. Short term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of scientifically valid and population-appropriate methods, interventions, and instruments.

This request includes studies investigating the utility and acceptability of proposed sampling and recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced.

This request also includes collection of information from public health programs to assess needs related to initiation of a new program activity or expansion or changes in scope or implementation of existing program

activities to adapt them to current needs. The information collected will be used to advise programs and provide capacity-building assistance tailored to the identified needs.

Overall, these development activities are intended to provide information that will increase the success of the surveillance or research projects through increasing response rates and decreasing response error, thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) Structured and qualitative interviewing for surveillance, research, interventions and material development, (2) cognitive interviewing for development of specific data collection instruments, (3) methodological research (4) usability testing of technology-based instruments and materials, (5) field testing of new methodologies and materials, (6) investigation of mental models for health decision-making, to inform health communication messages, and (7) organizational needs assessments to support development of capacity. Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer assisted development activities) are selected purposively from those who respond to recruitment advertisements.

In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project. Participation of respondents is voluntary. The total burden hours are 55,820. There is no cost to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
General public	Screener Att6	68,208	1	10/60
Healthcare providers	Screener Att6	29,232	1	10/60
General public	Consent Forms Att9	34,104	1	5/60
Healthcare providers	Consent Forms Att9	14,616	1	5/60
General public	Individual interview Att4	5,544	1	1
Healthcare providers	Individual Interview Att4	2,376	1	1
General Public	Focus Group Interview Att7	3,360	1	2
Healthcare providers	Focus Group Interview Att7	1,440	1	2
General public	Survey of Individual Att5	25,200	1	30/60
Healthcare providers	Survey of Individual Att5	10,800	1	30/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–27431 Filed 10–27–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project: Implementation Plan Guidance for the Tribal Maternal, Infant, and Early Childhood Home Visiting Grant Program.

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Needs Assessment and Implementation Plan.

OMB No.: 0970–0389.

Description: Social Security Act, Title V, Section 511 (42 U.S.C. 711), as added by § 2951 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), created the Maternal, Infant, and Early Childhood Home Visiting Program (MIECHV) and authorized the Secretary of HHS (in Section 511(h)(2)(A)) to award grants to Indian tribes (or a consortium of Indian tribes), tribal organizations, or urban Indian organizations to conduct an early childhood home visiting program. The legislation set aside 3 percent of the total MIECHV program appropriation (authorized in Section 511(j)) for grants to tribal entities. Tribal MIECHV grants, to the greatest extent practicable, are to be consistent with the requirements of the MIECHV grants to states and jurisdictions (authorized in Section 511(c)), and include conducting a needs assessment and establishing quantifiable, measurable benchmarks.

The Administration for Children and Families, Office of Child Care and Office of the Deputy Assistant Secretary for Early Childhood Development, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, plans to awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting grant awards will support 5-year cooperative agreements to conduct community needs assessments, plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk Tribal communities, and participate in research and evaluation activities to build the knowledge base on home visiting among Native populations.

In Year 1 of the cooperative agreement, grantees must (1) conduct a comprehensive community needs and readiness assessment and (2) develop a plan to respond to identified needs. Specifically, grantees will be required to conduct or update a needs and readiness assessment, and develop an implementation plan to respond to those needs, including a plan for performance measurement and CQI and participating in or conducting rigorous evaluation activities. Grantees will be expected to submit the needs assessment and implementation plan within 10 months of the Year 1 award date.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Year 1 Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Tribal Maternal, Infant, and Early Childhood Home Visiting Program Needs Assessment and Plan for Responding to Identified Needs	25	1	100	2,500
Estimated Total Annual Burden Hours				2,500

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–27416 Filed 10–27–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0477]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on investigational device exemptions reports and records.

DATES: Submit either electronic or written comments on the collection of information by December 28, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0477 for Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational Device Exemptions Reports and Records. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information [,including each proposed [extension/reinstatement] of an existing collection of information,] before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational Device Exemptions Reports and Records—21 CFR Part 812—OMB Control Number 0910–0078–Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) added section 520(g)(6) to the FD&C Act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement. An IDE allows a device, which would otherwise be subject to provisions of the FD&C Act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards. To do this, the regulation provides for different levels of regulatory control, depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, *i.e.,* devices that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements. The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available. Section 812.10 permits the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety. Sections 812.20, 812.25, and 812.27 consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations.

Section 812.20 lists the data requirements for the original IDE application, § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in the original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Upon approval of an IDE application by FDA, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation that affects the scientific soundness of the study or the rights, safety, or welfare of the subjects, is required to submit a request for the change to FDA. Section 812.150 requires a sponsor to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to assure protection of human subjects and to allow review of the study's progress. Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interest of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device, and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for

investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study, records of receipt, use or disposition of devices, records of each subject's case history and exposure to the device, informed consent documentation, study protocol, and documentation of any deviation from the protocol. Sponsors are required to maintain records including correspondence and reports concerning the study, records of shipment and disposition, signed investigator agreements, adverse device effects information, and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records of device name and intended use, study objectives, investigator information, investigational review board information, and statement on the extent that good manufacturing practices will be followed.

For a nonsignificant risk device investigation, the investigators' and sponsors' recordkeeping and reporting burden is reduced. Pertinent records on the study must be maintained by both parties, and reports are made to sponsors and institutional review boards (IRBs). Reports are made to FDA only in certain circumstances, *e.g.,* recall of the device, the occurrence of unanticipated adverse effects, and as a consequence of certain IRB actions. The estimate of the burden is based on the number of IDEs received in recent years.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Waivers—812.10	1	1	1	1	1
IDE Application—812.20, 812.25, and 812.27	356	1	356	80	28,480
Supplements—812.35 and 812.150	356	12	4,272	6	25,632
Treatment IDE Applications—812.36(c)	1	1	1	120	120
Treatment IDE Reporting—812.36(f)	1	1	1	20	20
Total					54,253

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total Hours
Original—812.140	356	1	356	10	3,560
Supplemental—812.140	356	12	4,272	1	4,272
Nonsignificant—812.140	356	1	356	6	2,136
Total					9,968

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Reports for Nonsignificant Risk Studies—812.150	1	1	1	6	6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 22, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27420 Filed 10–27–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0007]

Product Development Under the Animal Rule; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled ''Product Development Under the Animal Rule.'' When human efficacy studies are not ethical and field trials are not feasible, FDA may rely on adequate and well-controlled animal efficacy studies to support approval of a drug or licensure of a biological product under the Animal Rule. This guidance finalizes the 2014 revised draft guidance for industry ''Product Development Under the Animal Rule.'' It is intended to help potential stakeholders (industry, academia, and government) understand FDA's expectations for product development under the Animal Rule.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–D–0007 for ''Product Development Under the Animal Rule; Guidance for Industry; Availability.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. This guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Rosemary Roberts, Counter-Terrorism and Emergency Coordination Staff, Office of the Center Director, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, Rm. 2155, Silver Spring, MD 20993–0002, 301–796–2210; or Cynthia Kelley, Office of the Director, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 71, Rm. 7204, Silver Spring, MD 20993–0002, 240–402–8089.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Product Development Under the Animal Rule.'' In the **Federal Register** of June 3, 2014 (79 FR 31950), FDA announced the availability of a revised draft guidance for industry entitled ''Product Development Under the Animal Rule,'' intended to help potential stakeholders understand FDA's expectations for product development under the Animal Rule (see 21 CFR 314.600 through 314.650 for drugs and 21 CFR 601.90 through 601.95 for biological products). The 2014 revised draft guidance replaced the 2009 draft guidance for industry entitled ''Animal Models—Essential Elements to Address Efficacy Under the Animal Rule'' (74 FR 3610) and addressed a broader scope of issues for products developed under the Animal Rule. The comment period for the revised draft guidance closed on August 4, 2014. We reviewed all comments received and considered them in finalizing the revised draft guidance. This guidance finalizes the revised draft guidance issued on June 3, 2014.[1]

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on product development under the Animal Rule. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

[1] Adequate and well-controlled animal efficacy studies are required under the Animal Rule. As a policy, FDA is committed to the exploration of non-animal testing methods.

(44 U.S.C. 3501–3520). The collection of information in 21 CFR part 312 (investigational new drug applications) has been approved under OMB control number 0910–0014. The collection of information in 21 CFR part 314 (new drug applications) has been approved under OMB control number 0910–0001. The collection of information resulting from special protocol assessments has been approved under OMB control number 0910–0470. The collection of information resulting from formal meetings between applicants and FDA has been approved under OMB control number 0910–0429. The collection of information resulting from good laboratory practices has been approved under OMB control number 0910–0119. The collection of information resulting from current good manufacturing practices has been approved under OMB control number 0910–0139.

III. Electronic Access

Persons with access to the Internet may obtain the document at*http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm, or http://www.regulations.gov.*

Dated: October 22, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27361 Filed 10–27–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0142]

Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route; Guidance for Industry and Review Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry and review staff entitled ''Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route.'' The guidance provides recommendations concerning the evaluation of the nonclinical safety of reformulated drug products or products being used by an alternate route. It is intended for use by interested individuals in industry and reviewers within the Center for Drug Evaluation and Research (CDER). The goals of this guidance are to foster and expedite the development of reformulated drug products or the use of previously approved drugs by alternate routes, communicate to industry current CDER thoughts pertaining to safety data needed to support these drug products, and increase uniformity within CDER on expectations for the nonclinical development of reformulated drug products or products being used by an alternate route. This guidance finalizes the draft guidance of the same name published on March 7, 2008.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions''.

Instructions: All submissions received must include the Docket No. FDA–2008–D–0142 for ''Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route; Guidance for Industry and Review Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential''. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Paul C. Brown, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg., 22, Rm. 6472, Silver Spring, MD 20993–0002, 301–796–0856.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and review staff entitled ''Nonclinical Safety Evaluation of Reformulated Drug Products and Products Intended for Administration by an Alternate Route.'' This guidance provides recommendations regarding the nonclinical evaluation of a new formulation containing a previously approved drug substance and of a product proposed for use by an alternate route of administration for which the product was not previously approved.

Generally, nonclinical data support use of a drug product by a particular route and also reflect the planned duration of use. Much of the available nonclinical information used to support approval of the initial formulation can be used to support the safety of additional formulations assuming all legal rights to the information are met. Information used to support an initial formulation, however, may not always be sufficient to support such additional approvals because changes in the formulation could produce a new toxicity. This is particularly true if the drug product's route of administration is different or the duration of use changes markedly. Therefore, additional nonclinical studies might be recommended to ensure that the toxicity of a new formulation is fully characterized.

This guidance provides general nonclinical considerations for all reformulations or new routes of use and several route-specific considerations. The considerations in this guidance can also be applied to routes not specifically mentioned in the guidance.

This guidance finalizes the draft guidance of the same name published on March 7, 2008. Changes to the guidance include the addition of a recommendation that toxicology studies be conducted under good laboratory practices, clarification that histopathology can be limited in some cases to locally exposed tissues, the addition of a reference to the International Conference on Harmonisation guidance for industry entitled ''S10 Photosafety Evaluation of Pharmaceuticals,'' and other clarifications to the studies recommended for specific routes such as dermal, ocular, and intranasal.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on nonclinical safety evaluation of reformulated drug products and products intended for administration by an alternate route. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 21, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27418 Filed 10–27–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Biology of Infectious Diseases Agents, Drug Resistance and Drug Discovery.

Date: November 16–17, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Skeletal Muscle.

Date: November 17, 2015.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathophysiological Correlates of Visual System Disorders and Mechanisms of Intervention.

Date: November 19, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Alessandra C Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205 MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 23, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27427 Filed 10–27–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Therapeutics To Treat Obesity, Type 2 Diabetes, Fatty Liver Disease, and Liver Fibrosis in Humans

AGENCY: National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the following inventions embodied in the following patent applications, entitled ''CB1 receptor mediating compounds'':

1. U.S. Provisional Patent Application No.: 61/991,333
HHS Ref. No.: E–140–2014/0–US–01
Filed: May 09, 2014
2. PCT Application No.: PCT/US2015/029946
HHS Ref. No.: E–140–2014/0–PCT–02
Filed: May 08, 2015
3. U.S. Provisional Patent Application No.: 61/725,949
HHS Ref. No.: E–282–2012/0–US–01
Filed: November 13, 2012
4. PCT Application No.: PCT/US2013/069686
HHS Ref. No.: E–282–2012/0–PCT–02
Filed: November 12, 2013
5. U.S. Patent Application No.: 14/442,383
HHS Ref. No.: E–282–2012/0–US–03
Filed: May 12, 2015
6. Canadian Patent Application No.: 2889697
HHS Ref. No.: E–282–2012/0–CA–04
Filed: April 27, 2015
7. European Patent Application No.: 13802153.0
HHS Ref. No.: E–282–2012/0–EP–05
Filed: June 01, 2015
8. Indian Patent Application No.: 3733/DELNP/2015
HHS Ref. No.: E–282–2012/0–IN–06
Filed: May 01, 2015
9. Japanese Patent Application No.: 2015–542015
HHS Ref. No.: E–282–2012/0–JP–07
Filed: May 11, 2015
10. Chinese Patent Application No.: 201380069389.9
HHS Ref. No.: E–282–2012/0–CN–08
Filed: July 3, 2015
11. U.S. Provisional Application No.: 62/171,179
HHS Ref. No.: E–282–2012/1–US–01
Filed: June 04, 2015

to Inversago Pharma Inc., (''Inversago''), a company incorporated under the laws of Canada having an office in at least Montreal-Ouest, Quebec, Canada. The patent rights in these inventions have been assigned to the United States of America. This license may be worldwide. The field of use may be related to ''Development of therapeutics to treat obesity, type 2 diabetes, fatty liver disease and liver fibrosis in humans.''

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before November 12, 2015 will be considered.

ADDRESSES: Requests for copies of the patent application, patents, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Patrick McCue, Ph.D., Senior Licensing and Patenting Manager, Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases, 12A South Drive, Bethesda, MD 20892, Telephone: (301) 435–5560; Email: *patrick.mccue@nih.gov.* A signed confidentiality non-disclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology, and its corresponding patent applications, is directed to methods of treating obesity and associated diseases such as type 2 diabetes, hepatic steatosis, and liver fibrosis by administering an agent that reduces appetite, body weight, and insulin resistance. This technology may be useful as a means for treating obesity and metabolic syndrome without serious adverse neuropsychiatric side effects.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Properly-filed and complete competing applications for a license in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 19, 2015.

Anna Z. Amar,

Acting Deputy Director, Technology Advancement Office, National Institute of Diabetes and Digestive and Kidney, Diseases, National Institutes of Health.

[FR Doc. 2015–27454 Filed 10–27–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0805]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The National Offshore Safety Advisory Committee and its Subcommittee will hold a public meeting in Katy, TX to discuss the safety of operations and other matters affecting the offshore oil and gas industry. These meetings are open to the public.

DATES: Subcommittees of the National Offshore Safety Advisory Committee will meet on Wednesday, November 18, 2015 from 1 p.m. to 4 p.m. and the full Committee will meet on Thursday, November 19, 2015, from 8:30 a.m. to 4:30 p.m. (All times are Central Standard Time). These meetings may end early if the Committee has completed its business, or they may be extended based on the number of public comments.

ADDRESSES: The meetings will be held at the Det Norske Veritas GL conference facility located at 1400 Ravello Drive, Katy, TX 77449.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the individuals listed in **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Committee as listed in the ''Agenda'' section below. Written comments may be submitted using the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: All submissions received must include the words ''Department of

Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* insert USCG–2015–0805 in the Search box, press Enter, and then click on the item you wish to view.

A public oral comment period will be held during the meeting on November 19, 2015, and speakers are requested to limit their comments to 3 minutes. Contact one of the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Jose Perez, Designated Federal Officer of the National Offshore Safety Advisory Committee, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE. Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8382 or email *jose.a.perez3@uscg.mil,* or Mr. Pat Clark, telephone (202) 372–1358, fax (202) 372–8382 or email *Patrick.w.clark@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* Title 5 United States Code, Appendix. The National Offshore Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within U.S. Coast Guard jurisdiction.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/nosac* no later than November 1, 2015. Alternatively, you may contact Mr. Pat Clark as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Agenda

Day 1

The National Offshore Safety Advisory Subcommittee on Cyber Security on the Outer Continental Shelf will meet on November 18, 2015 from 1 p.m. to 2 p.m. to review, discuss and formulate recommendations. Following this Subcommittee meeting, the Lifeboat Safety Subcommittee will meet from 2 p.m. to 3 p.m. and then the Towing of Mobile Offshore Drilling Unit Subcommittee will meet from 3 p.m. to 4 p.m.

Day 2

The National Offshore Safety Advisory full Committee will hold a public meeting on November 19, 2015 from 8:30 a.m. to 4:30 p.m. to review and discuss the progress of the Subcommittees and any reports and recommendations received from the above listed Subcommittees from their deliberations on November 18, 2015. The Committee will then use this information and consider public comments in formulating recommendations to the U.S. Coast Guard. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendation portions of the meeting as well as during the public comment period, see Agenda item (4).

A complete agenda for November 19, 2015 Committee meeting is as follows:

(1) General Administration, acceptance of minutes from the April 2015 NOSAC public meeting.

(2) Current Business—Presentation and discussion of Subcommittee updates and any final reports to include recommendations from the Subcommittees on Cyber Security, Lifeboat Safety, and Towing of Mobil Offshore Drilling Units.

(3) New Business—Introduction of new Task Statements by the Coast Guard:

a) Offshore Well Intervention Operations.

(4) Presentations and discussions on the following matters:

(a) Marine Well Containment;

(b) The Bureau of Safety and Environmental Enforcement's Risk Based Inspection Program;

(5) Public comment period.

The agenda, any draft final reports, new task statements and presentations will be available approximately 7 days prior to the meeting at the *https://homeport.uscg.mil/nosac* Web site or by contacting Mr. Pat Clark in the **FOR FURTHER INFORMATION CONTACT**.

Minutes

Meeting minutes from this public meeting will be available for public view and copying within 90 days following the close of the meeting at the *https://homeport.uscg.mil/nosac* Web site.

Dated: October 13, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2015–27419 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties remains unchanged from the previous quarter. For the calendar quarter beginning October 1, 2015, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: *Effective Date:* October 1, 2015.

FOR FURTHER INFORMATION CONTACT: Michael P. Dean, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4882.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective

for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2015–17, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2015, and ending on December 31, 2015. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1) plus two percentage points (2) for a total of three percent (3) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1) plus one percentage point (1) for a total of two percent (2). For overpayments made by non-corporations, the rate is the Federal short-term rate (1) plus two percentage points (2) for a total of three percent (3). These interest rates are subject to change for the calendar quarter beginning January 1, 2016, and ending March 31, 2016.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	*Ending date*	*Under-payments* (percent)	*Over-payments* (percent)	*Corporate Overpayments* (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	123115	3	3	2

Dated: October 23, 2015.

R. Gil Kerlikowske,

Commissioner.

[FR Doc. 2015–27437 Filed 10–27–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona:					
Gila (FEMA Docket No.: B–1519).	City of Globe (15–09–0719P).	The Honorable Terence O. Wheeler, Mayor, City of Globe, 150 North Pine Street, Globe, AZ 85501.	150 North Pine Street, Globe, AZ 85501.	Aug. 27, 2015	040029
Gila (FEMA Docket No.: B–1519).	Unincorporated areas of Gila County (15–09–0719P).	The Honorable Michael A. Pastor, Chairman, Gila County Board of Supervisors, Gila County Courthouse, 1400 East Ash Street, Globe, AZ 85501.	Gila County Courthouse, 1400 East Ash Street, Globe, AZ 85501.	Aug. 27, 2015	040028
Maricopa (FEMA Docket No.: B–1519).	City of Goodyear (14–09–4544P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	City Hall, 190 North Litchfield Road, Goodyear, AZ 85338.	Aug. 28, 2015	040046
Maricopa (FEMA Docket No.: B–1519).	Unincorporated areas of Maricopa County (14–09–4544P).	The Honorable Steve Chucri, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	Aug. 28, 2015	040037
Maricopa (FEMA Docket No.: B–1519).	Town of Buckeye (15–09–0487P).	The Honorable Jackie A. Meck, Mayor, Town of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Town Hall, 100 North Apache Street, Suite A, Buckeye, AZ 85326.	Aug. 7, 2015	040039
Maricopa (FEMA Docket No.: B–1519).	City of Phoenix (15–09–0681P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Jul. 31, 2015	040051

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Maricopa (FEMA Docket No.: B–1519).	City of Phoenix (15–09–0733P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	Aug. 6, 2015	040051
Mohave (FEMA Docket No.: B–1519).	Unincorporated areas of Mohave County (15–09–1030P).	The Honorable Steven C. Moss, Chairman, Mohave County Board of Supervisors, 700 West Beale Street, Kingman, AZ 86401.	City Administration Building, 700 West Beale Street, Kingman, AZ 86401.	Aug. 25, 2015	040058
Pima (FEMA Docket No.: B–1519).	Town of Oro Valley (14–09–4165P).	The Honorable Satish Hiremath, Mayor, Town of Oro Valley, 11000 North La Canada Drive, Oro Valley, AZ 85737.	Planning and Zoning Department, 11000 North La Canada Drive, Oro Valley, AZ 85737.	Aug. 10, 2015	040109
Pinal (FEMA Docket No.: B–1519).	Town of Florence (15–09–0582P).	The Honorable Tom Rankin, Mayor, Town of Florence, P.O. Box 2670, Florence, AZ 85132.	Department of Public Works, 425 East Ruggles, Florence, AZ 85132.	Aug. 28, 2015	040084
California:					
San Mateo (FEMA Docket No.: B–1519).	City of Foster City (15–09–0526P).	The Honorable Art Kiesel, Mayor, City of Foster City, 610 Foster City Boulevard, Foster City, CA 94404.	City Hall, 610 Foster City Boulevard, Foster City, CA 94404.	Aug. 6, 2015	060318
San Mateo (FEMA Docket No.: B–1519).	City of San Mateo (15–09–0526P).	The Honorable Maureen Freschet, Mayor, City of San Mateo, 330 West 20th Avenue, San Mateo, CA 94403.	City Hall, 330 West 20th Avenue, San Mateo, CA 94403.	Aug. 6, 2015	060328
Ventura (FEMA Docket No.: B–1519).	City of Oxnard (15–09–1117P).	The Honorable Timothy B. Flynn, Mayor, City of Oxnard, 305 West 3rd Street, Oxnard, CA 93030.	Public Works/Development Services, 305 West 3rd Street, Oxnard, CA 93030.	Aug. 14, 2015	060417
Ventura (FEMA Docket No.: B–1519).	Unincorporated areas of Ventura County (15–09–1117P).	The Honorable Kathy I. Long, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	Ventura County Hall of Administration, Public Works Agency: Permit Counter, 800 South Victoria Avenue, Ventura, CA 93009.	Aug. 14, 2015	060413
Nevada:					
Douglas (FEMA Docket No.: B–1519).	Unincorporated areas of Douglas County (15–09–0570P).	The Honorable Doug N. Johnson, Chairman, Douglas County Board of Commissioners, 1616 8th Street, Minden, NV 89423.	Douglas County Public Works Department, 1615 8th Street, Minden, NV 89423.	Jul. 30, 2015	320008
Washoe (FEMA Docket No.: B–1519).	Unincorporated areas of Washoe County (14–09–3181P).	The Honorable Marsha Berkbigler, Chair, Washoe County Board of Commissioners, P.O. Box 11130, Reno, NV 89520.	Washoe County Administration Building, Department of Public Works, 1001 East Ninth Street, Reno, NV 89512.	Jul. 31, 2015	320019

[FR Doc. 2015–27411 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be

construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas:					
Drew (FEMA Docket No.: B–1516).	City of Monticello (14–06–3181P).	The Honorable Zackery Tucker, Mayor, City of Monticello, P.O. Box 505, Monticello, AR 71657.	City Hall, 203 West Gaines Street, Monticello, AR 71655.	Aug. 13, 2015	050074
Drew (FEMA Docket No.: B–1516).	Unincorporated areas of Drew County (14–06–3181P).	The Honorable Robert Akin, Drew County Judge, 210 South Main Street, Monticello, AR 71655.	Drew County Courthouse, 210 South Main Street, Monticello, AR 71655.	Aug. 13, 2015	050430
Arizona:					
Pima (FEMA Docket No.: B–1526).	Town of Marana (14–09–3997P).	The Honorable Gilbert Davidson, Manager, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Town Hall, 11555 West Civic Center Drive, Marana, AZ 85653.	Aug. 24, 2015	040118
Pima (FEMA Docket No.: B–1526).	Unincorporated areas of Pima County (14–09–3997P).	The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 97 East Congress Street, 3rd Floor, Tucson, AZ 85701.	Aug. 24, 2015	040073
Colorado:					
Eagle (FEMA Docket No.: B–1514).	Unincorporated areas of Eagle County (14–08–1086P).	The Honorable Kathy Chandler-Henry, Chair, Eagle County Board of Commissioners, P.O. Box 850, Eagle, CO 81631.	Eagle County Building and Engineering Department, 500 Broadway Street, Eagle, CO 81631.	Aug. 7, 2015	080051
Fremont (FEMA Docket No.: B–1514).	City of Canon City (14–08–0930P).	The Honorable Tony Greer, Mayor, City of Canon City, 901 Main Street, Canon City, CO 81212.	City Hall, 128 Main Street, Canon City, CO 81212.	Aug. 3, 2015	080068
Fremont (FEMA Docket No.: B–1514).	Unincorporated areas of Fremont County (14–08–0930P).	The Honorable Ed Norden, Chairman, Fremont County Board of Commissioners, 615 Macon Avenue, Room 105, Canon City, CO 81212.	Fremont County Administrator, 615 Macon Avenue, Canon City, CO 81212.	Aug. 3, 2015	080067
Florida:					
Bay (FEMA Docket No.: B–1522).	Unincorporated areas of Bay County (15–04–1287P).	The Honorable Robert Majka, Jr., Bay County Manager, 840 West 11th Street, Panama City, FL 32401.	Bay County Government Offices, 707 Jenks Avenue, Suite B, Panama City, FL 32401.	Aug. 24, 2015	120004
Charlotte (FEMA Docket No.: B–1522).	Unincorporated areas of Charlotte County (15–04–3689P).	The Honorable Bill Truex, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	Aug. 24, 2015	120061
Collier (FEMA Docket No.: B–1522).	City of Naples (15–04–4054P).	The Honorable John Sorrey, III, 735 8th Street South, Naples, FL 34102.	City Hall, 735 8th Street South, Naples, FL 34102.	Aug. 24, 2015	125130
Lee (FEMA Docket No.: B–1522).	Unincorporated areas of Lee County (14–04–5866P).	The Honorable Brian Hamman, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community Development Department, 1500 Monroe Street,, 2nd Floor, Fort Myers, FL 33901.	Aug. 20, 2015	125124
Lee (FEMA Docket No.: B–1514).	Unincorporated areas of Lee County (15–04–2532P).	The Honorable Brian Hamman, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	Lee County Community Development Department, 1500 Monroe Street,, 2nd Floor, Fort Myers, FL 33901.	Jul. 31, 2015	125124
Manatee (FEMA Docket No.: B–1526).	Unincorporated areas of Manatee County (14–04–A642P).	The Honorable Betsy Benac, Chair, Manatee County Board of Comminssioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Mantee Avenue West, Bradenton, FL 34205.	Jul. 3, 2015	120153
Monroe (FEMA Docket No.: B–1522).	City of Key West (15–04–1481P).	The Honorable Craig Cates, Mayor, City of Key West, 3126 Flagler Avenue, Key West, FL 33040.	Planning Department, 605A Simonton Street, Key West, FL 33040.	Aug. 24, 2015	120168
Monroe (FEMA Docket No.: B–1522).	Unincorporated areas of Monroe County (15–04–2332P).	The Honorable Danny Kolhage, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon FL 33050.	Aug. 24, 2015	125129
Monroe (FEMA Docket No.: B–1522).	Unincorporated Areas of Monroe County (15–04–2377P).	The Honorable Danny Kolhage, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon FL 33050.	Aug. 24, 2015	125129

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Monroe (FEMA Docket No.: B–1522).	Unincorporated areas of Monroe County (15–04–2859P).	The Honorable Danny Kolhage, Mayor, Monroe County, 1100 Simonton Street, Key West, FL 33040.	Department of Planning and Environmental Resources, 2798 Overseas Highway, Marathon FL 33050.	Aug. 24, 2015	125129
Orange (FEMA Docket No.: B–1522).	City of Orlando (15–04–1669P).	The Honorable Buddy Dyer, Mayor, City of Orlando, City Hall, 400 South Orange Avenue, Orlando, FL 32802.	City Hall, 400 South Orange Avenue, Orlando, FL 32802.	Aug. 24, 2015	120186
Orange (FEMA Docket No.: B–1522).	City of Orlando (15–04–4657X).	The Honorable Buddy Dyer, Mayor, City of Orlando, City Hall, 400 South Orange Avenue, Orlando, FL 32802.	City Hall, 400 South Orange Avenue, Orlando, FL 32802.	Aug. 24, 2015	120186
St. Johns (FEMA Docket No.: B–1522).	Unincorporated areas of St. Johns County (15–04–2346P).	The Honorable Rachael L. Bennett, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County, Administration Building, 4040 Lewis Speedway, St. Augustine, FL 32084.	Aug. 25, 2015	125147
Maryland: Frederick (FEMA Docket No.: B–1526).	Unincorporated areas of Frederick County (15–03–0484P).	The Honorable Jan H. Gardner, Frederick County Executive, 12 East Church Street, Frederick, MD 21701.	Public Works Department, 355 Montevue Lane, Suite 200, Frederick, MD 21702.	Aug. 31, 2015	240027
New Mexico: Eddy (FEMA Docket No.: B–1526).	City of Carlsbad (14–06–4548P).	The Honorable Dale W. Janway, Mayor, City of Carlsbad, P.O. Box 1569, Carlsbad, NM 88221.	City Hall, 101 North Halagueno Street, Carlsbad, NM 88220.	Aug. 28, 2015	350017
North Carolina:					
Guilford (FEMA Docket No.: B–1448).	City of Greensboro (14–04–2255P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Central Library, 219 North Church Street, Greensboro, NC 27401.	Jan. 9, 2015	375351
Pitt (FEMA Docket No.: B–1526).	City of Greenville (15–04–3563P).	The Honorable Allen M. Thomas, Mayor, City of Greenville, 200 West 5th Street, Greenville, NC 27834.	City Hall, 200 West 5th Street, Greenville, NC 27834.	Aug. 26, 2015	370191
Pitt (FEMA Docket No.: B–1526).	Unincorporated areas of Pitt County (15–04–3563P).	The Honorable Glen Webb, Chairman, Pitt County Board of Commissioners, 1717 West 5th Street, Greenville, NC 27834.	Pitt County Planning Department, 1717 West 5th Street, Greenville, NC 27834.	Aug. 26, 2015	370372
Wayne (FEMA Docket No.: B–1526).	City of Goldsboro (15–04–2620P).	The Honorable Alfonzo King, Mayor, City of Goldsboro, P.O. Drawer A, Goldsboro, NC 27533.	Engineering Department, 200 North Center Street, Goldsboro, NC 27530.	Aug. 25, 2015	370255
Pennsylvania: Luzerne (FEMA Docket No.: B–1516).	Borough of Dallas (14–03–0189P).	The Honorable Lee W. Eckert, President, Borough of Dallas Council, 25 Main Street, Dallas, PA 18612.	Administration Building, 25 Main Street, Dallas, PA 18612.	Aug. 20, 2015	421825
South Carolina: Oconee (FEMA Docket No.: B–1522).	Unincorporated areas of Oconee County (15–04–2201P).	The Honorable Wayne McCall, Chairman, Oconee County Council, 260 Mountain Springs Road, West Union, SC 29696.	Oconee County Administrator, 415 South Pine Street, Walhalla, SC 29691.	Aug. 21, 2015	450157
Texas:					
Bexar (FEMA Docket No.: B–1516).	City of San Antonio (15–06–1148P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78283.	Aug. 19, 2015	480045
Brazoria (FEMA Docket No.: B–1516).	City of Pearland (14–06–3203P).	The Honorable Tom Reid, Mayor, City of Pearland, 3519 Liberty Drive, Pearland, TX 77581.	City Hall Annex, 3523 Liberty Drive, Pearland, TX 77581.	Jul. 31, 2015	480077
Dallas (FEMA Docket No.: B–1522).	City of Carrollton (15–06–1351P).	The Honorable Leonard Martin, Manager, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	Aug. 24, 2015	480167
Denton (FEMA Docket No.: B–1516).	City of Highland Village (14–06–4109P).	The Honorable Charlotte Wilcox, Mayor, City of Highland Village, 1000 Highland Village Road, Highland Village, TX 75077.	City Hall, 1000 Highland Village Road, Highland Village, TX 75077.	Aug. 6, 2015	481105
Harris (FEMA Docket No.: B–1522).	Unincorporated areas of Harris County (15–06–0175P).	The Honorable Edward M. Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Aug. 26, 2015	480287
Hays (FEMA Docket No.: B–1516).	City of San Marcos (14–06–1023P).	The Honorable Daniel Guerrero, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	Permit Center, 630 East Hopkins Street, San Marcos, TX 78666.	Aug. 5, 2015	485505
Tarrant (FEMA Docket No.: B–1522).	City of Fort Worth (14–06–3506P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	Aug. 3, 2015	480596
Tarrant (FEMA Docket No.: B–1526).	City of North Richland Hills (14–06–2312P).	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX, 76180.	City Hall, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	Aug. 5, 2015	480607
Travis (FEMA Docket No.: B–1526).	City of Pflugerville (14–06–4534P).	The Honorable Brandon Wade, Manager, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	Planning Department, 201–B East Pecan Street, Pflugerville, TX 78691.	Aug. 27, 2015	481028
Walker (FEMA Docket No.: B–1522).	City of Huntsville (14–06–3819P).	The Honorable Mac Woodward, Mayor, City of Huntsville, 1212 Avenue M, Huntsville, TX 77340.	Engineering Department, 448 State Highway 75 North, Huntsville, TX 77340.	Aug. 27, 2015	480639
Utah:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Salt Lake (FEMA Docket No.: B–1522).	City of West Jordan (14–08–1329P).	The Honorable Kim V. Rolfe, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	City Hall, 8000 South Redwood Road, West Jordan, UT 84088.	Aug. 24, 2015	490108
Weber (FEMA Docket No.: B–1522).	City of North Ogden (14–08–1297P).	The Honorable Brent Taylor, Mayor, City of North Ogden, 505 East 2600 North, North Ogden, UT 84414.	City Hall, 505 East 2600 North, North Ogden, UT 84414.	Aug. 24, 2015	490214
Weber (FEMA Docket No.: B–1522).	Unincorporated areas of Weber County (14–08–1297P).	The Honorable Kerry Gibson, Chairman, Weber County Commission, 2380 Washington Boulevard, Suite 360, Ogden, UT 84401.	Weber County Government Building, 2380 Washington Boulevard, Ogden, UT 84401.	Aug. 24, 2015	490187
Virginia: Fauquier (FEMA Docket No.: B–1516).	Unincorporated areas of Fauquier County (14–03–2615P).	Mr. Paul McCulla, Fauquier County Administrator, 10 Hotel Street, Suite 204, Warrenton, VA 20186.	Fauquier County Zoning and Development Services Department, 29 Ashby Street, Suite 310, Warrenton, VA 20186.	Jul 30, 2015	510055

[FR Doc. 2015–27472 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1543]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before January 26, 2016.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1543, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies will be identified by the unique project number and Preliminary FIRM date listed in the

tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
St. Mary Parish, Louisiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–06–2286S Preliminary Date: June 30, 2015	
Chitimacha Tribe of Louisiana	Chitimacha Tribe of Louisiana, St. Mary Parish Courthouse, Planning and Zoning Office, 500 Main Street, 5th Floor, Franklin, LA 70538.
City of Franklin	City Hall, 300 Iberia Street, Franklin, LA 70538.
City of Morgan City	Planning and Zoning Department, 509 2nd Street, Morgan City, LA 70380.
City of Patterson	City Hall, 1314 Main Street, Patterson, LA 70392.
Town of Baldwin	Town Hall, 800 Main Street, Baldwin, LA 70514.
Town of Berwick	Town Hall, 3225 Third Street, Berwick, LA 70342.
Unincorporated Areas of St. Mary Parish	St. Mary Parish Courthouse, Planning and Zoning Office, 500 Main Street, 5th Floor, Franklin, LA 70538.
Warren County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 07–03–0302S Preliminary Dates: June 11, 2010 and June 12, 2015	
Borough of Bear Lake	Borough of Bear Lake, Warren County Building, Henry R. Rouse Annex, 100 Dillon Drive, Youngsville, PA 16371.
Borough of Clarendon	Borough Building, 15 North Main Street, Clarendon, PA 16313.
Borough of Sugar Grove	Borough of Sugar Grove, Warren County Courthouse Office of Planning and Zoning, 204 4th Avenue, Warren, PA 16365.
Borough of Tidioute	Borough Maintenance Garage, 63 Grant Street, Tidioute, PA 16351.
Borough of Youngsville	Borough Building, 40 Railroad Street, Youngsville, PA 16371.
City of Warren	City Municipal Building, 318 West 3rd Avenue, Warren, PA 16365.
Township of Brokenstraw	Brokenstraw Township Building, 770 Rouse Avenue, Youngsville, PA 16371.
Township of Cherry Grove	Cherry Grove Fire Hall and Township Office, 6039 Cherry Grove Road, Clarendon, PA 16313.
Township of Columbus	Township Building, 44 North Street, Columbus, PA 16405.
Township of Conewango	Conewango Township Building, 4 Fireman Street, Warren, PA 16365.
Township of Deerfield	Deerfield Township Building, 4638 Morrison Run Road, Tidioute, PA 16351.
Township of Eldred	Eldred Township Building, 2915 Newton Road, Pittsfield, PA 16340.
Township of Elk	Elk Township Office, 3794 Cole Hill Road, Suite 1, Russell, PA 16345.
Township of Farmington	Farmington Township Lander Volunteer Fire Department, 596 Fairbanks Road, Russell, PA 16345.
Township of Freehold	Freehold Township Building, 139 Lottsville Niobe Road, Bear Lake, PA 16402.
Township of Glade	Glade Township Municipal Building, 1285 Cobham Park Road, Warren, PA 16365.
Township of Limestone	Limestone Township Municipal Building, 16 Hill Drive, Tidioute, PA 16351.
Township of Mead	Mead Township Building, 119 Mead Boulevard, Clarendon, PA 16313.
Township of Pine Grove	Pine Grove Township Hall, 306 East Street, Russell, PA 16345.
Township of Pittsfield	Township Municipal Building, 488 Dalrymple Street, Pittsfield, PA 16340.
Township of Pleasant	Pleasant Township Municipal Building, 8 Chari Lane, Warren, PA 16365.
Township of Sheffield	Township Office, 20 Leather Street, Sheffield, PA 16347.
Township of Southwest	Township of Southwest, Warren County Courthouse Office of Planning and Zoning, 204 4th Avenue, Warren, PA 16365.
Township of Spring Creek	Township Building, 3811 Old Route 77, Spring Creek, PA 16436.
Township of Sugar Grove	Township Building, 195 Creek Road, Sugar Grove, PA 16350.
Township of Triumph	Triumph Township Building, 10390 Youngsville Road, Grand Valley, PA 16420.
Township of Watson	Watson Township Community Building, 2011 Route 337, Tidioute, PA 16351.

Community	Community map repository address
Minnehaha County, South Dakota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
Project: 15–08–0479S Preliminary Date: June 26, 2015	
City of Sioux Falls	City Hall, 224 West Ninth Street, Sioux Falls, SD 57117.
Unincorporated Areas of Minnehaha County	Minnehaha County Planning Department, 415 North Dakota Avenue, Sioux Falls, SD 57104.

[FR Doc. 2015–27414 Filed 10–27–15; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 16, 2015, which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. WATERSHED—STUDIES

Community	Community map repository address
Lower Susquehanna Watershed York County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1419	
Borough of Cross Roads	Cross Roads Borough Secretary's Office, 14771 Cross Mill Road, Felton, PA 17322.
Borough of Delta	Borough Office, 101 College Avenue, Delta, PA 17314.
Borough of Dillsburg	Municipal Building, 151 South Baltimore Street, Dillsburg, PA 17019.
Borough of Dover	Borough Hall, 46 Butter Road, Dover, PA 17315.
Borough of Fawn Grove	Citizens Volunteer Fire Company, 171 South Market Street, Fawn Grove, PA 17321.
Borough of Felton	Borough Office, 88 Main Street, Felton, PA 17322.
Borough of Glen Rock	Borough Building, 1 Manchester Street, Glen Rock, PA 17327.
Borough of Goldsboro	Goldsboro Municipal Building, 53 North York Street, Etters, PA 17319.
Borough of Hallam	Borough Building, 250 West Beaver Street, Hallam, PA 17406.
Borough of Hanover	Borough Office, 44 Frederick Street, Hanover, PA 17331.
Borough of Jacobus	Borough Office, 126 North Cherry Lane, Jacobus, PA 17407.

I. WATERSHED—STUDIES—Continued

Community	Community map repository address
Borough of Jefferson	Jefferson Borough Office, 48 Baltimore Street, Codorus, PA 17311.
Borough of Lewisberry	Borough Community Center, 308 Market Street, Lewisberry, PA 17339.
Borough of Manchester	Borough Hall, 225 South Main Street, Manchester, PA 17345.
Borough of Mount Wolf	Borough Office, 345 Chestnut Street, Mount Wolf, PA 17347.
Borough of New Freedom	Borough Office, 49 East High Street, New Freedom, PA 17349.
Borough of North York	North York Municipal Building, 350 East Sixth Avenue, York, PA 17404.
Borough of Railroad	Borough Office, 2 East Main Street, Railroad, PA 17355.
Borough of Seven Valleys	Borough Office, 9 Maple Street, Seven Valleys, PA 17360.
Borough of Spring Grove	Borough Office, 1 Campus Avenue, Spring Grove, PA 17362.
Borough of Wellsville	Borough Office, 299 Main Street, Wellsville, PA 17365.
Borough of Windsor	Borough Building, 2 East Main Street, Windsor, PA 17366.
Borough of Wrightsville	Municipal Office, 601 Water Street, Wrightsville, PA 17368.
Borough of Yoe	Borough Building, 150 North Maple Street, Yoe, PA 17313.
Borough of York Haven	Borough Hall, 2 Pennsylvania Avenue, Storage Room, York Haven, PA 17370.
City of York	Department of Public Works, 101 South George Street, York, PA 17401.
Township of Carroll	Carroll Township Municipal Building, 555 Chestnut Grove Road, Dillsburg, PA 17019.
Township of Chanceford	Chanceford Community Building, 51 Muddy Creek Forks Road, Brogue, PA 17309.
Township of Codorus	Codorus Township Building, 4631 Shaffers Church Road, Glenville, PA 17329.
Township of Conewago	Conewago Township Secretary's Office, 490 Copenhaffer Road, York, PA 17404.
Township of Dover	Township Building, 2480 West Canal Road, Dover, PA 17315.
Township of East Hopewell	East Hopewell Township Office, 8916 Hickory Road, Felton, PA 17322.
Township of East Manchester	East Manchester Township Office, 5080 North Sherman Street Extension, Mount Wolf, PA 17347.
Township of Fairview	Fairview Township Building, 599 Lewisberry Road, New Cumberland, PA 17070.
Township of Fawn	Fawn Township Office, 245 Alum Rock Road, New Park, PA 17352.
Township of Franklin	Franklin Township Building, 150 Century Lane, Dillsburg, PA 17019.
Township of Heidelberg	Heidelberg Township Building, 6424 York Road, Spring Grove, PA 17362.
Township of Hellam	Hellam Township Office, 44 Walnut Springs Road, York, PA 17406.
Township of Hopewell	Hopewell Township Building, 3336 Bridgeview Road, Stewartstown, PA 17363.
Township of Jackson	Jackson Township Municipal Building, 439 Roth's Church Road, Spring Grove, PA 17362.
Township of Lower Chanceford..	Lower Chanceford Township Building, 4120 Delta Road, Airville, PA 17302.
Township of Lower Windsor	Lower Windsor Township Building, 2425 Craley Road, Wrightsville, PA 17368.
Township of Manchester	Manchester Township Building, 3200 Farmtrail Road, York, PA 17406.
Township of Manheim	Manheim Township Building, 5191 Wool Mill Road, Glenville, PA 17329.
Township of Monaghan	Monaghan Township Municipal Office, 202 South York Road, Dillsburg, PA 17019.
Township of Newberry	Newberry Township Building, 1915 Old Trail Road, Etters, PA 17319.
Township of North Codorus	North Codorus Township Municipal Building, 1986 Stoverstown Road, Spring Grove, PA 17362.
Township of North Hopewell	North Hopewell Township Building, 13081 High Point Road, Felton, PA 17322.
Township of Paradise	Paradise Township Municipal Building, 82 Beaver Creek Road, Abbottstown, PA 17301.
Township of Peach Bottom	Peach Bottom Township Office, 529 Broad Street Extension, Delta, PA 17314.
Township of Penn	Penn Township Municipal Building, 20 Wayne Avenue, Hanover, PA 17331.
Township of Shrewsbury	Shrewsbury Township Municipal Building, 11505 Susquehanna Trail South, Glen Rock, PA 17327.
Township of Spring Garden	Spring Garden Township Zoning Office, 558 South Ogontz Street, York, PA 17403.
Township of Springettsbury	Springettsbury Township Community Development Department, 1501 Mount Zion Road, York, PA 17402.
Township of Springfield	Springfield Township Administrative Building, 9211 Susquehanna Trail South, Seven Valleys, PA 17360.
Township of Warrington	Warrington Township Municipal Building, 3345 Rosstown Road, Wellsville, PA 17365.

I. WATERSHED—STUDIES—Continued

Community	Community map repository address
Township of Washington	Washington Township Municipal Building, 14 Creek Road, East Berlin, PA 17316.
Township of West Manchester	West Manchester Township Building, 380 East Berlin Road, York, PA 17408.
Township of West Manheim	West Manheim Township Office, 2412 Baltimore Pike, Hanover, PA 17331.
Township of Windsor	Windsor Township Municipal Office, 1480 Windsor Road, Red Lion, PA 17356.
Township of York	York Township Complex, Engineering Department, 190 Oak Road, Dallastown, PA 17313.

II. NON-WATERSHED-BASED STUDIES:

Community	Community Map Repository Address
City of Cordova, Alaska, Valdez-Cordova Census Area Docket No.: FEMA–B–1436	
City of Cordova	City Hall, 602 Railroad Avenue, Cordova, AK 99574
St. Joseph County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1436	
City of Mishawaka	City Hall, 600 East Third Street, Mishawaka, IN 46544.
Town of Osceola	Town Hall, 850 Lincoln Way West, Osceola, IN 46561.
Unincorporated Areas of St. Joseph County	St. Joseph County City Building, 227 West Jefferson Boulevard, South Bend, IN 46601.
Anoka County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–1348	
City of Andover	City Hall, 1685 Crosstown Boulevard Northwest, Andover, MN 55304.
City of Anoka	City Hall, 2015 First Avenue North, Anoka, MN 55303.
City of Bethel	City Hall, 23820 Dewey Street, Bethel, MN 55005.
City of Blaine	City Hall Offices, 10801 Town Square Drive Northeast, Blaine, MN 55449.
City of Centerville	City Hall, 1880 Main Street, Centerville, MN 55038.
City of Circle Pines	City Hall, 200 Civic Heights Circle, Circle Pines, MN 55014.
City of Columbia Heights	City Hall, 590 40th Avenue Northeast, Columbia Heights, MN 55421.
City of Columbus	City Hall, 16319 Kettle River Boulevard, Columbus, MN 55025.
City of Coon Rapids	City Hall, 11155 Robinson Drive, Coon Rapids, MN 55433.
City of East Bethel	City Hall, 2241 221st Avenue Northeast, East Bethel, MN 55011.
City of Fridley	City Hall, 6431 University Avenue Northeast, Fridley, MN 55432.
City of Ham Lake	City Hall, 15544 Central Avenue Northeast, Ham Lake, MN 55304.
City of Lexington	City Hall, 9180 Lexington Avenue, Lexington, MN 55014.
City of Lino Lakes	City Hall, 600 Town Center Parkway, Lino Lakes, MN 55014.
City of Nowthen	City Offices, 8188 199th Avenue Northwest, Elk River, MN 55330.
City of Oak Grove	City Hall, 19900 Nightingale Street Northwest, Cedar, MN 55011.
City of Ramsey	Municipal Center, 7550 Sunwood Drive Northwest, Ramsey, MN 55303.
City of Spring Lake Park	City Hall, 1301 81st Avenue Northeast, Spring Lake Park, MN 55432.
City of St. Francis	City Hall, 23340 Cree Street Northwest, St. Francis, MN 55070.
Unincorporated Areas of Anoka County	Government Center, 2100 Third Avenue, 7th Floor, Anoka, MN 55303.
James City County, Virginia, and Incorporated Areas Docket No.: FEMA–B–1431	
City of Williamsburg (Independent City)	Planning Department, 401 Lafayette Street, Williamsburg, VA 23185.
Unincorporated Areas of James City County	James City County Development Management, 101–A Mounts Bay Road, Williamsburg, VA 23185.
Cowlitz County, Washington, and Incorporated Areas Docket No.: FEMA–B–1239	
City of Castle Rock	City Hall, 141 A Street Southwest, Castle Rock, WA 98611
City of Kalama	City Hall, 320 North 1st Street, Kalama, WA 98625
City of Kelso	City Hall, 203 South Pacific Avenue, Kelso, WA 98626
City of Longview	City Hall, 1525 Broadway Street, Longview, WA 98632
City of Woodland	City Hall, 230 Davidson Avenue, Woodland, WA 98674
Unincorporated Areas of Cowlitz County	Cowltiz County Administration Building, 207 4th Avenue North Kelso, WA 98626

II. NON-WATERSHED-BASED STUDIES:—Continued

Community	Community Map Repository Address
Iowa County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1426	
City of Dodgeville	City Hall, 100 East Fountain Street, Dodgeville, WI 53533.
City of Mineral Point	City Hall, 137 High Street, Suite 1, Mineral Point, WI 53565.
Unincorporated Areas of Iowa County	Iowa County Zoning Office, 222 North Iowa Street, Dodgeville, WI 53533.
Village of Avoca	Village Hall, 401 Wisconsin Street, Avoca, WI 53506.
Village of Barneveld	Village Hall, 403 East County Highway ID, Barneveld, WI 53507.
Village of Blanchardville	Village Hall, 208 Mason Street, Blanchardville, WI 53516.
Village of Cobb	Village Hall, 501 Benson Street, Cobb, WI 53526.
Village of Hollandale	Village Hall, 200 5th Avenue, Hollandale, WI 53544.
Village of Linden	Village Hall, 444 Jefferson Avenue, Linden, WI 53553.
Village of Ridgeway	Village Hall, 113 Dougherty Court, Ridgeway, WI 53582.

[FR Doc. 2015–27415 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001; Internal Agency Docket No. FEMA–B–1523]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency; DHS.

ACTION: Notice; correction.

SUMMARY: On August 19, 2015, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 80 FR 50307–50308. The table provided here represents the proposed flood hazard determinations and communities affected for Lower Suwannee Watershed.

DATES: Comments are to be submitted on or before January 26, 2016.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1523, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 80 FR 50307–50308 in the August 19, 2015, issue of the **Federal Register**, FEMA published a table titled ''Lower Suwannee Watershed''. This table contained inaccurate information as to the name of a community within Gilchrist County affected by the proposed flood hazard determinations, as well as the community map repository for the Unincorporated Areas of Madison County, featured in the table.

In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 14, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Lower Suwannee Watershed Gilchrist County, Florida, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.fema.gov/preliminaryfloodhazarddata*	
City of Trenton	City Hall, 114 North Main Street, Trenton, FL 32690.
City of Fanning Springs	City Hall, 17651 NW 90th Court, Fanning Springs, FL 32693.
Unincorporated Areas of Gilchrist County	Gilchrist County Building and Zoning Department, 209 SE First Street, Trenton, FL 32690.
Levy County, Florida, and Incorporated Areas	
Unincorporated Areas of Levy County	Levy County Building Department, 9010 NE 79th Avenue, Bronson, FL 32621.
Madison County, Florida, and Incorporated Areas	
Unincorporated Areas of Madison County	Madison County Building Department, 229 S.W. Pinckney Street, Madison, FL 32340.
Suwannee County, Florida, and Incorporated Areas	
Unincorporated Areas of Suwannee County	County Coordinator's Office, Suwannee County Courthouse, 200 South Ohio/MLK Jr. Avenue, Live Oak, FL 32064.

[FR Doc. 2015–27475 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4242–DR; Docket ID FEMA–2015–0002]

Washington; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–4242–DR), dated October 15, 2015, and related determinations.

DATES: *Effective Date:* October 15, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 15, 2015, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe windstorm on August 29, 2015, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. Dargan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Washington have been designated as adversely affected by this major disaster:

Island, Jefferson, and Snohomish Counties for Public Assistance.

All areas within the State of Washington are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–27477 Filed 10–27–15; 8:45 am]

BILLING CODE 9111–23—P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the

State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* October 16, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Chesterfield, Marion, and Saluda Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–27466 Filed 10–27–15; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0018; OMB No. 1660–0024]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Federal Assistance for Offsite Radiological Emergency Preparedness and Planning

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 27, 2015.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street SW., Washington, DC 20472–3100, or email address *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: This information collection was previously published in the **Federal Register** on August 10, 2015, at 80 FR 47943 with a 60 day public comment period. FEMA did not receive any comments in response to this proposed information collection. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Federal Assistance for Offsite Radiological Emergency Preparedness & Planning.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0024.

Form Titles and Numbers: There are no forms.

Abstract: The intent of this request is to revise a currently approved information collection to incorporate existing information collections in use without an OMB control number representing all information collections related to FEMA Radiological Emergency Preparedness (REP) Program requirements described in 44 CFR parts 350 and 352. Currently, only the 44 CFR part 352 collection is included under OMB Control #1660–0024.

Affected Public: State, Local or Tribal Government; and Business and other for profits.

Estimated Number of Respondents: 153.

Estimated Total Annual Burden Hours: 5,321.

Estimated Cost: The estimated annual cost to respondents is $216,219.98.

Dated: October 21, 2015.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–27412 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0001]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email)

Luis.Rodriguez3@fema.dhs.gov; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 8, 2015.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Idaho:					
Ada FEMA Docket No.: B–1512).	City of Boise (14–10–2112P).	The Honorable David Bieter, Mayor, City of Boise, P. O. Box 500, Boise, ID 83701.	City of Boise, Planning and Development Services, City Hall, 150 North Capital Boulevard, Boise, ID 83701.	Aug. 3, 2015	160002
Illinois:					
DuPage (FEMA Docket No.: B–1513).	City of Warrenville (15–05–1937P).	The Honorable David L. Brummel, Mayor, City of Warrenville, City Hall, 28W701 Stafford Place, Warrenville, IL 60555.	Warrenville City Hall, 3S258 Manning Avenue, Warrenville, IL 60555.	Aug. 14, 2015	170218
DuPage (FEMA Docket No.: B–1513).	Unincorporated areas of DuPage County (15–05–1937P).	Mr. Dan Cronin, County Board Chairman, DuPage County, Administration Building, 421 North County Farm Road, Wheaton, IL 60187.	DuPage County Department of Development and Environmental Concerns, 421 North County Farm Rd., 2nd Floor, Wheaton, IL 60187.	Aug. 14, 2015	170197
Kane FEMA Docket No.: B–1512).	City of Aurora (15–05–0787P).	The Honorable Thomas Weisner, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60505.	City Hall, Engineering Department, 44 East Downer Place, Aurora, IL 60505.	Aug. 6, 2015	170320
Kane FEMA Docket No.: B–1512).	Unincorporated areas of Kane County (15–05–0787P).	The Honorable Christopher Lauzen, Kane County Chairman, Kane County Government Center, 719 South Batavia Avenue,, Building A, Geneva, IL 60134.	Kane Village Hall, Main Street, P. O. Box 167, Kane, IL 62054.	Aug. 6, 2015	170896
Indiana:					
Allen (FEMA Docket No.: B–1513).	Unincorporated areas of Allen County (14–05–9162P).	The Honorable F. Nelson Peters, Allen County Commissioner, Citizens Square, 200 East Berry Street, Suite 410, Fort Wayne, IN 46802.	1 East Main Street, Room 630, Fort Wayne, IN 46802.	Aug. 25, 2015	180302
Iowa:					
Poweshiek FEMA Docket No.: (B–1506).	Unincorporated areas of Poweshiek County (15–07–0505P).	The Honorable Lamoyne Gaard, Chairman, Poweshiek County Board of Supervisors, 931 Summer Street, Grinnell, IA 50112.	P. O. Box 297, 4802 Barnes City Road, Montezuma, IA 50112.	Jul. 16, 2015	190902
Massachusetts:					
Norfolk FEMA Docket No.: (B–1506).	City of Quincy (15–01–0275P).	The Honorable Thomas P. Koch, Mayor, City of Quincy, Quincy City Hall, 1305 Hancock Street, Quincy, MA 02169.	1305 Hancock Street, Quincy, MA 02169.	Jul. 17, 2015	255219
Plymouth FEMA Docket No.: (B–1512).	Town of Hingham (15–01–0904P).	Ms. Irma Lauter, Chair, Board of Selectman, Town Hall, 210 Central Street, Hingham, MA 02043.	Town Hall, 210 Central Street, Hingham, MA 02043.	Aug. 14, 2015	250268
Michigan:					
Macomb FEMA Docket No.: (B–1512).	Township of Washington (14–05–8670P).	Mr. Dan O'Leary, Township Supervisor, Township of Washington, 57900 Van Dyke Road, Washington, MI 48094.	57900 Van Dyke Avenue, Washington, MI 48094.	Aug. 3, 2015	260447
Oakland FEMA Docket No.: (B–1518).	City of Novi (15–05–3406P).	The Honorable Bob Gatt, Mayor, City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, MI 48375.	45175 West Ten Mile Road, Novi, MI 48375.	Aug. 31, 2015	260175

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Minnesota:					
Clay (FEMA Docket No.: (B–1512).	City of Moorhead (15–05–0455P).	The Honorable Del Rae Williams, Mayor, City of Moorhead, Moorhead City Hall, 500 Center Avenue, Moorhead, MN 56561.	500 Center Avenue, Moorhead, MN 56561.	Aug. 14, 2015	275244
Missouri:					
Jefferson (FEMA Docket No.: (B–1512).	City of De Soto (15–07–0329P).	The Honorable Werner Stichling, Mayor, City of De Soto, 17 Boyd Street, De Soto, MO 63020.	17 Boyd Street, De Soto, MO 63020.	Aug. 7, 2015	295263
Jefferson (FEMA Docket No.: (B–1512).	Unincorporated areas of Jefferson County (15–07–0329P).	The Honorable Ken Waller, Jefferson County Executive, Jefferson County Administration Center, 729 Maple Street, Suite G30, Hillsboro, MO 63050.	300 Main Street, P. O. Box 100, Hillsboro, MO 63050.	Aug. 7, 2015	290808
Ohio:					
Delaware FEMA Docket No.: (B–1513).	Unincorporated areas of Delaware County (15–05–1599P).	The Honorable Gary Merrell, President, Delaware County Board of Commissioners, 101 North Sandusky Street, Delaware, OH 43015.	50 Channing Street, South Wing, Delaware, OH 43015.	Aug. 1, 2015	390146
Franklin FEMA Docket No.: (B–1513).	City of Columbus (15–05–1599P).	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, 2nd Floor, Columbus, OH 43215.	757 Carolyn Avenue, Columbus, OH 43224.	Aug. 1, 2015	390170
Franklin FEMA Docket No.: (B–1513).	City of Dublin (15–05–1599P).	The Honorable Michael Keenan, Mayor, City of Dublin, 5200 Emerald Parkway, Dublin, OH 43017.	5800 Shier-Rings Road, Dublin, OH 43017.	Aug. 1, 2015	390673
Franklin FEMA Docket No.: (B–1513).	Unincorporated areas of Franklin County (15–05–1599P).	The Honorable Marilyn Brown, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215.	280 East Broad Street, Columbus, OH 43215.	Aug. 1, 2015	390167
Virginia:					
Fairfax FEMA Docket No.: (B–1512).	City of Fairfax (15–03–0545P).	The Honorable Scott Silverthorne, Mayor, City of Fairfax, Fairfax City Hall, 10455 Amstrong Street, Room 316, Fairfax, VA 22030.	10455 Amstrong Street, Room 200, Fairfax, VA 22030.	Aug. 7, 2015	515524
Wisconsin:					
Kenosha FEMA Docket No.: (B–1513).	City of Kenosha (14–05–8669P).	The Honorable Keith G. Bosman, Mayor, City of Kenosha, 625 52nd Street, Kenosha, WI 53140.	625 52nd Street, Kenosha, WI 53140.	Aug. 21, 2015	550209
Kenosha FEMA Docket No.: (B–1513).	Village of Bristol (14–05–8669P).	Mr. Michael Farrell, President, Village of Bristol, 19801 83rd Street, Bristol, WI 53104.	19801 83rd Street, Bristol, WI 53104.	Aug. 21, 2015	550595
Milwaukee FEMA Docket No.: (B–1513).	City of Greenfield (15–05–0082P).	The Honorable Michael J. Neitzke, Mayor, City of Greenfield, 7325 West Forest Home Avenue, Greenfield, WI 53220.	7325 West Forest Home Avenue, Greenfield, WI 53220.	Aug. 21, 2015	550277

[FR Doc. 2015–27413 Filed 10–27–15; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2015–0025; OMB No. 1660–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request; Individual & Community Preparedness Division (ICPD) Annual Youth Preparedness Council (YPC) Application Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Individual & Community Preparedness Division (ICPD) Annual Youth Preparedness Council (YPC) Application Form.

DATES: Comments must be submitted on or before December 28, 2015.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2015–0025. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., 8NE., Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ryan Gaul, Administrative Specialist, FEMA, National Preparedness Directorate, Individual & Community Preparedness Division, (202) 786–9852. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The FEMA Youth Preparedness Council (YPC) was formed to bring together youth leaders from across the country

who are highly interested and engaged in advocating youth preparedness and making a difference in their communities. This collection meets the requirements of 6 U.S.C. Sec. 742, National Preparedness, and Presidential Policy Directive—8 (PPD–8) which emphasize the need for involvement from all sectors of society in preparing for and responding to threats and hazards.

Collection of Information

Title: Individual & Community Preparedness Division (ICPD) Annual Youth Preparedness Council (YPC) Application Form.

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

FEMA Forms: FEMA Form 008–0–0–24, FEMA Youth Preparedness Council Application Form.

Abstract: FEMA Headquarters and regional staff review completed applications to select council members based on dedication to public service, efforts in making a difference in their community, and potential for expanding their impact as a national advocate for youth preparedness. Applicants for the YPC apply by downloading a PDF application from FEMA's Web site and submit the application and related documents, including reference letters, to FEMA via the *FEMA-Youth-Prepareness-Council@fema.dhs.gov* email address. One youth from each of the ten regions for which FEMA is divided is selected to serve as a council member. An additional 5 youths are selected for an at-large assignment.

Affected Public: Individuals or households.

Number of Respondents: 100.

Number of Responses: 100.

Estimated Total Annual Burden Hours: 142 hours.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $0. There are no annual costs to respondents' operations and maintenance costs for technical services. There are no annual start-up or capital costs. The cost to the Federal Government is $65,662.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: October 21, 2015.

Richard W. Mattison,

Records Management Program Chief, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2015–27476 Filed 10–27–15; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–MB–2015–N183; FF08M00000–FXMB12310800000–145]

Golden Eagles; Programmatic Take Permit Application; Draft Environmental Assessment; Alta East Wind Project, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Fish and Wildlife Service announces the availably of a draft Environmental Assessment (DEA) under the National Environmental Policy Act (NEPA) for the issuance of a take permit for golden eagles pursuant to the Bald and Golden Eagle Protection Act (Eagle Act), in association with the operation of the Alta East Wind Project in Kern County, California. The DEA was prepared in response to an application from Alta Wind X, LLC (applicant), an affiliate of NRG Yield, Inc., for a 5-year programmatic take permit for golden eagles (*Aquila chrysaetos*) under the Eagle Act. The applicant would implement a conservation program to avoid, minimize, and compensate for the project's impacts to eagles, as described in the applicant's Eagle Conservation Plan (ECP). We invite public comment on the DEA, which evaluates alternatives for this permit decision.

DATES: To ensure consideration, written comments must be received on or before December 28, 2015.

ADDRESSES:

Obtaining Documents: You may download copies of the DEA on the Internet at: *http://www.fws.gov/cno/conservation/MigratoryBirds/EaglePermits.html.* Alternatively, you may use one of the methods below to request a CD–ROM of the document.

Submitting Comments: You may submit comments or requests for copies or more information by one of the following methods.

- *Email: fw8_eagle_nepa@fws.gov.* Include ''Alta East Eagle Permit draft EA Comments'' in the subject line of the message.
- *U.S. Mail:* Heather Beeler, Migratory Bird Program, U.S. Fish and Wildlife Service, Pacific Southwest Regional Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825.
- *Fax:* Heather Beeler, Migratory Bird Program, 916–414–6486; Attn: Alta East Wind Project DEA Comments.

FOR FURTHER INFORMATION CONTACT: Heather Beeler, Migratory Bird Program, at the address shown above or at (916) 414–6651 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Fish and Wildlife Service is considering an application under the Bald and Golden Eagle Protection Act (16 U.S.C. 668a–d; Eagle Act) for a programmatic golden eagle (*Aquila chrysaetos*) take permit from Alta Wind X, LLC (applicant), affiliate of NRG Yield, Inc., for a 5-year programmatic take permit for golden eagles. The applicant's Alta East Wind Project is an existing, operational wind facility in the Tehachapi Wind Resource Area (WRA) within Kern County, California. The application includes an Eagle Conservation Plan (ECP) as the foundation of the applicant's permit application. The ECP and the project's Bird and Bat Conservation Strategy describe actions taken and proposed future actions to avoid, minimize, and mitigate adverse effects on eagles, birds, and bats.

We have prepared this DEA to evaluate the impacts of several alternatives associated with this permit application for compliance with our Eagle Act permitting regulations in the Code of Federal Regulations (CFR) at 50 CFR 22.26, as well as impacts of implementation of the supporting ECP, which is included as an appendix to the DEA.

Background

The Eagle Act allows us to authorize bald eagle and golden eagle programmatic take (take that is recurring, is not caused solely by indirect effects, and that occurs over the long term in a location or locations that cannot be specifically identified). Such

take must be incidental to actions that are otherwise lawful. The Eagle Act's implementing regulations define ''take'' as to ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb'' individuals, their nests and eggs (50 CFR 22.3); and ''disturb'' is further defined as ''to agitate or bother a bald or golden eagle to a degree that causes . . . (1) injury to an eagle, . . .(2) a decrease in its productivity, . . . or (3) nest abandonment'' (50 CFR 22.3). The Alta East Wind Project will result in recurring eagle mortalities over the life of the project, so the appropriate type of take permit is the programmatic permit under 50 CFR 22.26.

We may consider issuance of programmatic eagle take permits if: (1) The incidental take is necessary to protect legitimate interests; (2) the take is compatible with the preservation standard of the Eagle Act—providing for stable or increasing breeding populations; (3) the take has been avoided and minimized to the degree achievable through implementation of Advanced Compensation Practices, and the remaining take is unavoidable; and (4) compensatory mitigation will be provided for any remaining take. The Service must determine that the direct and indirect effects of the take and required mitigation, together with the cumulative effects of other permitted take and additional factors affecting eagle populations, are compatible with the preservation of bald eagles and golden eagles.

Applicant's Proposal

The permit applicant, Alta Wind X, LLC, is operating an approximately 150-megawatt (MW) commercial wind-energy facility in the Tehachapi WRA in Kern County, California. The recently constructed (December 2013) Alta East Wind Project was a new wind energy project on public (Bureau of Land Management) and private lands and was an expansion of Terra-Gen's Alta Wind Energy Center. The Bureau of Land Management and Kern County permitted Alta Wind X, LLC to construct, operate, maintain, and decommission up to 51 wind turbine generators and related infrastructure on approximately 2,600 acres of public and private land in 2013.

The applicant submitted an ECP on March 4, 2013, that was initially developed following recommendations provided by the Service and consistent with our January 2011 Draft Eagle Conservation Plan Guidance (*http://www.fws.gov/windenergy/docs/ECP_draft_guidance_2_10_final_clean_omb.pdf*). The Draft ECP was later updated to follow our finalized guidance, *Eagle Conservation Plan Guidance Module 1: Land-Based Wind Energy Version 2 (Service 2013) (ECP Guidance)* (*http://www.fws.gov/migratorybirds/PDFs/Eagle%20Conservation%20Plan%20Guidance-Module%201.pdf*).

As recommended in the Service's ECP Guidance, the applicant's plan outlines avoidance and minimization measures, contains a risk assessment, includes experimental advanced conservation practices, and adaptive management. The applicant submitted the ECP as part of the permit application, and if we issue the permit following the National Environmental Policy Act (NEPA) process, then the conservation commitments would become conditions of the permit.

The Service independently evaluated the risk of eagle fatalities from project operations and compared that risk to the conservation measures to which the applicant has committed. This is an essential step in the Service's evaluation of an application for a permit for programmatic take of eagles because issuing criteria require permitted take to comply with the Eagle Act's preservation standard. The Service has interpreted this standard to require maintenance of stable or increasing breeding populations of eagles (74 FR 46836; September 11, 2009). In the DEA, we evaluate the risk and offsetting conservation measures, and the implications for direct, indirect, and cumulative effects under five alternatives.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit application and comments submitted thereupon to determine whether the application meets the permitting requirements under the Eagle Act, applicable regulations, and NEPA requirements. Upon completion of that evaluation, we will select our course of action. We will make the final permit decision no sooner than 30 days after the close of the public comment period.

Public Comments

We invite public comment on the proposed DEA. If you wish, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

We will consider public comments on the DEA when making the final determination on NEPA compliance and permit issuance. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 668a of the Eagle Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Alexandra Pitts,

Deputy Regional Director, Pacific Southwest, Sacramento, California.

[FR Doc. 2015–27240 Filed 10–27–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT02000.L12200000.MA0000.241A.004500079363]

Final Supplementary Rules for the Castle Rocks Land Use Plan Amendment Area, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing supplementary rules for all BLM-administered public lands within an approximately 400-acre area in Idaho known as Castle Rocks. The BLM addressed this area in the November 2013 Cassia Resource Management Plan (RMP) Amendment and Record of Decision (ROD). The Cassia RMP amendment made implementation-level decisions designed to conserve natural and cultural resources while providing for recreational opportunities. These supplementary rules will allow the BLM and law enforcement partners to enforce those decisions.

DATES: These supplementary rules are effective on November 27, 2015.

ADDRESSES: You may direct your inquiries to the Bureau of Land Management, Burley Field Office, 15 East 200 South, Burley, Idaho 83318. email: *BLM_ID_BurleyOffice@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Thompson, Outdoor Recreation Planner, at 208–677–6664 or by email at

dthompson@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Thompson.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Discussion of Supplementary Rules
IV. Procedural Matters

I. Background

Castle Rocks is a dramatic geologic area located in the southern Albion Mountain Range of Cassia County, Idaho. Castle Rocks consists primarily of quartz-monzonite, a type of granite associated with the Almo Pluton. Pinnacles and monoliths, towering over 400 feet in local relief, characterize the area. Castle Rocks currently contains nearly pristine cultural and natural resources.

Until 2003, a difficult and lengthy hike from Stines Pass was the only way to access Castle Rocks, due to the unique ownership pattern and geography of the surrounding lands. This limited access helped preserve rare resources that are of great importance to the Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley. Castle Rocks became less isolated after the passage of the Castle Rock Ranch Acquisition Act of 2000 (Pub. L. 106–421), which authorized the National Park Service (NPS) to purchase a private ranch that provided more convenient public access on the east side of the geologic area. After the acquisition, the NPS exchanged the property with the Idaho Department of Parks and Recreation (IDPR) for other lands adjacent to existing NPS properties.

Since May 25, 2003, the IDPR has provided park facilities and managed recreation at Castle Rocks. Since 2003, the BLM has been protecting resources on the 400-acre parcel under its management through a series of temporary closure orders prohibiting rock climbing, camping, staging, and trail building. In 2012, the BLM determined that amending the Cassia RMP was necessary to properly manage the area. The decision in the Plan Amendment is to close the area permanently to rock climbing, camping, staging, and trail building. This decision will protect significant cultural resources that were, or had the potential to be, adversely impacted by these activities. The Shoshone-Bannock Tribes of Fort Hall and the Shoshone-Paiute Tribes of Duck Valley consider the area a sacred site and have requested the assistance of the BLM Burley Field Office in nominating the area as a Traditional Cultural Property under the National Historic Preservation Act.

These supplementary rules will help the BLM achieve management objectives and implement the Cassia RMP amendment. They will also provide the BLM with enforcement capability to help prevent damage to cultural and natural resources.

II. Discussion of Public Comments

The BLM published the proposed supplementary rules in the **Federal Register** on October 15, 2014 (79 FR 61899). Public comments were accepted for a 60-day period ending on December 15, 2014. The BLM received three comments. One comment favored protecting the resources, one comment was against any restriction on Federal lands, and the third comment did not apply to the Castle Rocks area. The comments received were not specific or confined to the issues pertinent to the proposed rules, nor did they recommend change or clarification; therefore, no changes were made to the proposed supplementary rules.

III. Discussion of Supplementary Rules

Supplementary rules are necessary to protect the cultural and natural resources within the 400-acre BLM parcel at Castle Rocks as described in the environmental assessment (EA) for the Cassia RMP amendment.

The supplementary rules prohibit traditional rock climbing, sport rock climbing, bouldering, staging, trail building, and camping on BLM-administered public land within the Castle Rocks area because of potential adverse effects to significant Traditional Cultural Properties, and rare historic, geologic, scenic and cultural resources resulting from these activities. Use of the existing Stines Creek trail as shown on the 2012 Oakley 1:100,000 surface management Status Map and free solo climbing—that is, climbing which does not use ropes, harnesses or other protective gear during ascent—are still authorized. The EA for the Cassia RMP amendment (Appendix II) designates the trail appropriate for foot, horse, or bike use and describes the authorized course of the trail.

IV. Procedural Matters

Executive Orders 12866, Regulatory Planning and Review

The final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Orders 12866. They will not have an effect of $100 million or more on the economy. They will not adversely affect, in a material way, the economy; productivity; competition; jobs; environment; public health or safety; or State, local, or tribal governments or communities. The final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They will not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor will they raise novel legal or policy issues. The supplementary rules merely contain rules of conduct for public use of a limited selection of public lands to prevent adverse effects to significant traditional cultural properties and rare historic, geologic, and scenic values at Castle Rocks.

National Environmental Policy Act (NEPA)

The BLM prepared an EA as part of the development of the Cassia RMP amendment at Castle Rocks. During that NEPA process, alternative decisions for the Cassia RMP amendment were fully analyzed or discussed and offered for public comment, including the substance of these supplementary rules. The pertinent analysis can be found in Chapter 4 of the Cassia RMP Amendment and Proposed Decision Record, April 2013. The ROD for the Cassia RMP was signed by the Idaho BLM State Director on November 20, 2013. These final supplementary rules will provide for enforcement of the plan decisions. The rationale for the decisions made is fully covered in the ROD, which is available for review in the BLM administrative record at the location specified in the **ADDRESSES** section and online at *https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=47887.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and will have no effect on business entities of any size. Therefore, the BLM has determined, under the RFA, that the final supplementary rules will not have

a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. These final supplementary rules will merely establish rules of conduct for use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These final supplementary rules will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year nor do they have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules will not have significant takings implications nor will they be capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that these rules will not cause a ''taking'' of private property or require preparation of a takings assessment.

Executive Order 13132, Federalism

These final supplementary rules will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. These final supplementary rules will not conflict with any law or regulation of the State of Idaho. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

The BLM has determined that these final supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Consultation and Coordination with the Shoshone-Bannock and the Shoshone-Paiute Tribes has been ongoing since 2010. The Tribes have been fully briefed and support these supplementary rules.

Information Quality Act

The Information Quality Act (Section 515 of Pub. L. 106–554) requires Federal agencies to maintain adequate quality, objectivity, utility, and integrity of the information that they disseminate. In developing these supplementary rules, the BLM did not conduct or use a study, experiment, or survey or disseminate any information to the public.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules will not constitute a significant energy action. These final supplementary rules will not have an adverse effect on energy supplies, production, or consumption, and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Amanda M. Dodson, Acting Burley Field Manager, Bureau of Land Management.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Burley Field Office, Bureau of Land Management, establishes supplementary rules for BLM-administered lands covered under the Cassia Resource Management Plan Amendment at Castle Rocks, to read as follows:

Supplementary Rules for the Portion of the Castle Rocks Area Managed by the U.S. Bureau of Land Management

Definitions

Traditional rock climbing means a style of climbing where a climber or group of climbers places all gear required to protect against falls and removes it when passage is complete.

Sport rock climbing means a style of climbing that relies on fixed protection against falls, usually bolts and/or top anchors.

Bouldering means ropeless climbing that involves short, sequential moves on rock usually no more than 20 feet off the ground and uses bouldering crash pads at the base of the climbing area to prevent injuries from falls.

Staging means assembling, unpacking or otherwise preparing gear for climbing; typically conducted at the base of the cliff, where gear such a backpacks may also be left during a climb, but in some cases, is conducted at the top of a cliff.

Trail building means the act of creating new travel routes through the use of tools; or user-created trails developed through repeated visits to a specific destination. EA DOI–BLM–ID–T020–2013–0010–EA Appendix II serves as the baseline for existing trails on BLM lands.

Camping means setting up, occupying or making use of a place for shelter or overnight stay.

On BLM-administered public land within the Castle Rocks area, the following supplementary rules apply:

1. Traditional and sport rock climbing and bouldering are prohibited.
2. Staging is prohibited.
3. Camping is prohibited.
4. Trail building is prohibited.

Exceptions: The following persons are exempt from these supplementary rules:

A. Any Federal, State, local, and/or military employee acting within the scope of their duties;

B. Members of any organized rescue or fire-fighting force performing an official duty; and

C. Persons, agencies, municipalities or companies holding an existing special use permit and operating within the scope of their permit.

Penalties: On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months or both. Such violations may also be subject to enhanced fines provided for by 18 U.S.C. 3571.

Timothy M. Murphy,

BLM Idaho State Director.

[FR Doc. 2015–27373 Filed 10–27–15; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[LLOR930000.L51010000.ER0000. LVRWH09H0320.15XL5017AP; HAG15–0153]

Notice of Availability of the Jordan Cove Energy and Pacific Connector Gas Pipeline Projects Final Environmental Impact Statement and the Proposed Associated Land Management Plan Amendments, Oregon

AGENCY: Bureau of Land Management, Interior; Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Federal Land Policy and Management Act of 1976, as amended, and the National Forest Management Act of 1976, as amended, the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) are jointly announcing the availability of the Jordan Cove Energy and Pacific Connector Gas Pipeline (PCGP) Projects Final Environmental Impact Statement (EIS) and Proposed Land Management Plan amendments, and by this notice are announcing their availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed Resource Management Plan (RMP) Amendments and/or USFS's Proposed Land and Resource Management Plan (LRMP) Amendments. A person who meets the conditions and files a protest must file the protest by November 27, 2015. The USFS has adopted the BLM's administrative review procedures as its objection process for this specific project.

ADDRESSES: Copies of the Jordan Cove Energy and PCGP Projects Final EIS have been sent to affected Federal, State, and local government agencies; affected tribes; and other stakeholders. Copies of the Proposed RMP Amendments/Final EIS are available for public inspection at the BLM district offices and the offices of the Forest Supervisors listed under **SUPPLEMENTARY INFORMATION**. Interested persons may also review the Proposed RMP Amendment/Final EIS on the Internet at *www.ferc.gov* under the Documents and Filings link. Enter the Federal Energy Regulatory Commission (FERC) docket number(s) (CP13–483 and/or CP13–492) to locate the specific documents. All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383

Overnight Delivery: BLM Director (210), Attention: Protest Coordinator, 20 M Street SE., Room 2134LM, Washington, DC 20003

FOR FURTHER INFORMATION CONTACT: FERC Office of External Affairs at 866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*). On the FERC Web site, go to Documents and Filings and click on the eLibrary link. Then click on ''General Search'' and enter the docket number, excluding the last three digits in the field (*i.e.,* CP13–492). For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 866–208–3676 or, for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the FERC such as orders, notices, and rulemakings.

SUPPLEMENTARY INFORMATION: This NOA is specific to the BLM, the BOR and the USFS and provides notice that these agencies have participated as cooperating agencies with FERC in the preparation of the Jordan Cove Energy and PCGP Projects Final EIS. The FERC has been the lead Federal agency for the environmental analysis of the proposed Jordan Cove Energy and PCGP Projects.

The comprehensive Jordan Cove Energy and PCGP Projects Final EIS includes consideration of the proposed actions of the FERC and the cooperating agencies, including a BLM right-of-way (ROW) grant and the associated BLM RMP and USFS Land and Resource Management Plan (LRMP) amendments, collectively referred to as Land Management Plan (LMP) amendments. The proposed actions described in the Final EIS include a number of amendments to the BLM and the USFS LMPs for the BLM Coos Bay, Roseburg, and Medford Districts and the Klamath Falls Resource Area of the Lakeview District and the Umpqua, Rogue River, and Winema National Forests. In addition, the proposed action in the Final EIS includes the ROW grant across Federal lands managed by the BLM, the USFS, and the Bureau of Reclamation. The BOR will not need to amend any LMPs as a result of this project.

Following issuance of the Final EIS and resolution of any protests, the BLM and USFS will prepare Records of Decision regarding the proposed LMP amendments. The BLM, with concurrence from the USFS and the Bureau of Reclamation, will also prepare a Record of Decision regarding whether to grant or deny ROW grants across Federal lands. The BLM's ROW decision may be appealed under 43 CFR part 4.

In accordance with 36 CFR 219.17(b)(2), the deciding official for the USFS has elected to use the 1982 planning rule procedures to amend the USFS LRMPs as provided in the transition procedures of the 2000 planning rule. The 1982 planning rule procedures require the USFS to determine the significance of the proposed amendments or alternatives in accordance with national forest planning regulation 36 CFR 219.10(f) (1982 procedures). The USFS will use criteria in Forest Service Manual 1926.5 to make this determination of the significance of proposed LRMP amendments. The following amendments have been developed by the BLM and the USFS as part of the proposed action in the Final EIS:

Amendment of the BLM Coos Bay District, Roseburg District, Medford District, and Klamath Falls Resource Area of the Lakeview District RMPs and the Umpqua National Forest, Rogue River National Forest, and Winema National Forest LMPs

BLM/USFS–1—Applicable BLM RMPs and USFS LRMPs would be amended to exempt ''certain known sites'' within the area of the proposed PCGP Project from the Management Recommendations required by the 2001 ''Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines,'' as modified by court order.

Amendment of the BLM Coos Bay District and Roseburg District RMPs

BLM–1—The Coos Bay District and Roseburg District RMPs would be amended to waive the requirements to protect occupied, suitable, and potential habitat for the Marbled Murrelet, as mapped by the BLM within the proposed PCGP Project area.

Amendments of BLM Roseburg District RMP

BLM–2—The Roseburg District RMP would be amended to exempt the PCGP Project from the requirement to retain habitat in ''Known Owl Activity Centers'' at three locations.

BLM–3—The Roseburg District RMP would be amended to change the designation of approximately 409 acres

from the Matrix land allocation to the Late-Successional Reserve (LSR) land allocation in Sections 32 and 34, T. 29 1/2 S., R. 7 W., and Section 1, T. 30 S., R. 7 W., W.M., Oregon.

Amendment of BLM Coos Bay District RMP

BLM–4—The Coos Bay District RMP would be amended to change the designation of approximately 387 acres from the Matrix land allocation to the LSR land allocation in Sections 19 and 29, T. 28 S., R. 10 W., W.M., Oregon.

Amendments of the Rogue River National Forest LRMP

RRNF–2—The Rogue River National Forest LRMP would be amended to change the Visual Quality Objective (VQO) in the area where the PCGP Project corridor would cross the Big Elk Road at pipeline milepost 161.4 in Section 16, T. 37 S., R. 4 E., W.M., Oregon, from ''foreground retention'' to ''foreground partial retention'' and allow more time for amended visual quality objectives to be attained.

RRNF–3—The Rogue River National Forest LRMP would be amended to change the VQO in the vicinity where the PCGP Project corridor would cross the Pacific Crest Trail at pipeline milepost 167.84 in Section 32, T. 37 S., R. 5 E., W.M., Oregon, from ''foreground partial retention'' to ''modification'' and allow more time for amended VQOs to be attained.

RRNF–4—The Rogue River National Forest LRMP would be amended to allow more time to meet the VQO between the PCGP Project corridor mileposts 156.3 to 156.8 and 157.2 to 157.5 in Sections 11 and 12, T. 37 S., R. 3 E., W.M., Oregon. Standards and Guidelines for ''Middleground Partial Retention'' require that VQOs for a given location be achieved within one year of completion of the project. Approximately 0.8 miles or 9 acres of Middleground Partial Retention VQO visible at distances of 0.75 to 5 miles from State Highway 140 would be affected by this amendment.

RRNF–5—The Rogue River National Forest LRMP would be amended to allow the PCGP Project corridor to cross lands subject to the ''restricted riparian management strategy'' Standards and Guidelines. This would potentially affect approximately 2.5 acres of the PCGP Project corridor associated with one perennial stream crossing of the South Fork of Little Butte Creek at milepost 162.45 in Section 15, T. 37 S., R. 4 E., W.M., Oregon.

RRNF–6—The Rogue River National Forest LRMP would be amended to waive limitations on areas affected by detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor in all affected management areas.

RRNF–7—The Rogue River National Forest LRMP would be amended to change the designation of approximately 512 acres from the Matrix land allocation to the LSR land allocation in Section 32, T. 36 S., R. 4 E., W.M., Oregon.

Amendments of the Umpqua National Forest LRMP

UNF–1—The Umpqua National Forest LRMP would be amended to change the Standards and Guidelines for Fisheries to allow the removal of effective shading vegetation where perennial streams would be crossed by the PCGP Project corridor. This change would potentially affect an estimated three acres of shading vegetation at four perennial stream crossings in the East Fork of Cow Creek from pipeline mileposts 109 to 110 in Sections 16 and 21, T. 32 S., R. 2 W., W.M., Oregon.

UNF–2—The Umpqua National Forest LRMP would be amended to change prescriptions C2–II and C2–IV and to allow the PCGP Project corridor to cross Riparian Areas (*i.e.,* Riparian Reserves) and run parallel to the East Fork of Cow Creek for approximately 0.1 mile between milepost 109.68 and 109.78 in Section 21, T. 32 S., R. 2 W., W.M., Oregon. This change would potentially affect approximately one acre of Riparian Reserve along the East Fork of Cow Creek.

UNF–3—The Umpqua National Forest LRMP would be amended to waive limitations on the area affected by detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor. Standards and Guidelines for Soils requires that not more than 20 percent of the project area have detrimental compaction, displacement, or puddling after completion of a project.

UNF–4—The Umpqua National Forest LRMP would be amended to change the designation of approximately 588 acres from the Matrix land allocation to the LSR 223 land allocation in Sections 7, 18, and 19, T. 32 S., R. 2 W., and Sections 13 and 24, T. 32 S., R. 3 W., W.M., Oregon.

Amendments of the Winema National Forest LRMP

WNF–1—The Winema National Forest LRMP would be amended to change the Standards and Guidelines for Management Area 3 (MA–3) to allow for development of the 95-foot-wide PCGP Project corridor in MA–3 from the Forest Boundary in Section 32, T. 37 S., R. 5 E., to the Clover Creek Road corridor in Section 4, T. 38 S, R. 5 E., W.M., Oregon. Standards and Guidelines for MA–3 state that the area is currently an avoidance area for new utility corridors. This amendment would apply to a portion of the proposed PCGP Project corridor that would be approximately 1.5 miles long and occupy approximately 17 acres.

WNF–2—The Winema National Forest LRMP would be amended to allow more time to achieve the VQO where the PCGP Project corridor would cross the Dead Indian Memorial Highway at approximately milepost 168.84 in Section 33, T. 37 S., R. 5 E., W.M., Oregon.

WNF–3—The Winema National Forest LRMP would be amended to allow more time to meet the VQO for Scenic Management, Foreground Partial Retention, where the PCGP Project corridor would be adjacent to the Clover Creek Road from approximately milepost 170 to 175 in Sections 2, 3, 4, 11 and 12, T. 38 S., R. 5 E., and Sections 7, 17 and 18, T. 38 S., R. 6 E., W.M., Oregon. This amendment would be applicable to approximately 50 acres of the proposed PCGP Project corridor.

WNF–4—The Winema National Forest LRMP would be amended to waive restrictions on detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor in all affected management areas.

WNF–5—The Winema National Forest LRMP would be amended to waive restrictions on detrimental soil conditions from displacement and compaction within the proposed PCGP Project corridor within Management Area 8, Riparian Area (MA–8). This amendment would apply to approximately 0.5 mile or an estimated 9.6 acres of MA–8. Standards and Guidelines for Soil and Water, MA–8 require that not more than 10 percent of the total riparian zone in an activity area be in a detrimental soil condition upon the completion of a project.

Copies of the Jordan Cove Energy and PCGP Projects Final EIS are available for inspection in the BLM Coos Bay, Roseburg, and Medford District offices; the Klamath Falls Resource Area of the Lakeview District office; and at the offices of the Forest Supervisors for the Rogue River, Umpqua, and Winema National Forests.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that the entire text of your comments—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Jerome E. Perez,

State Director, Oregon/Washington.

Alice Carlton,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 2015–27377 Filed 10–27–15; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–19523; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before October 3, 2015, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by November 12, 2015.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 3, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

COLORADO

Delta County

Bross Hotel, 312 Onarga Ave., Paonia, 15000780

DISTRICT OF COLUMBIA

District of Columbia

Tilden Hall, (Apartment Buildings in Washington, DC, MPS), 3945 Connecticut Ave. NW., Washington, 15000781

FLORIDA

Alachua County

Branch, Dan, House, 5707 SW. 17 Dr., Gainesville, 15000782

Lake County

Hill Crest, 511 E. Mirror Lake Dr., Fruitland Park, 15000783

Lee County

Cabbage Key Historic District, (Lee County MPS), Intracoastal Waterway Marker 60 in Pine Island Sound; Box 200, Pineland, 15000784

Volusia County

Meyer—Davis House—Hasty Cottage, 143 Beach St., Ponce Inlet, 15000786

IOWA

Dubuque County

Fenelon Place Residential Historic District, (Dubuque, Iowa MPS), Hill St., 3 & 5th Sts., W., Fenelon Pl., Fenelon Place Elevator, Dubuque, 15000787

MINNESOTA

Crow Wing County

Kenney Lake Overlook, (Federal Relief Construction in Minnesota, 1933–1943), MN 18, 900 ft. SW. of N. Kenney Lake Ln., Garrison, 15000789

St. Alban's Bay Culvert at Mille Lacs Lake, (Federal Relief Construction in Minnesota, 1933–1943), MN 169, 800 ft. N. of Cty. Rd. 26, Garrison, 15000788

Fillmore County

Inspiration Point Wayside Rest, (Federal Relief Construction in Minnesota, 1933–1943), MN 16, 16.2 mi. SW. of Cty. Rd. 21, Lanesboro, 15000790

Hennepin County

Strutwear Knitting Company Building, 1010 S. 7th St., Minneapolis, 15000791

NEBRASKA

Douglas County

10th and Pierce Car Barn, 1100 Pierce St., Omaha, 15000792

Polish Home, The, 4701 S 25th St., Omaha, 15000793

Lancaster County

Wesleyan Hospital and Nurses Training School, 2742 N. 48th St., Lincoln, 15000794

Washington County

Engineer Cantonment, Address Restricted, Ft. Calhoun, 15000795

NEVADA

Churchill County

Douglass—Frey Ranch, (Architecture of Frederick J. DeLongchamps TR), 1075 Dodge Ln., Fallon, 15000796

NEW JERSEY

Essex County

Orange Memorial Hospital Historic District, 180 S. Essex Ave., Orange, 15000797

Hunterdon County

Headquarters Historic District (Boundary Increase), Rosemont-Ringoes & Zentek Rds., Delaware Township, 15000798

NEW YORK

Erie County

Parkside Candy Shoppe and Factory, 3208 Main St., Buffalo, 15000799

Greene County

Christ Church, 11228 NY 32, Greenville, 15000800

Nassau County

Rockville Cemetery and Bristol and Mexico Monument, 45 Merrick Rd., Lynbrook, 15000801

Schuyler County

Coon Family Log Cabin, 2245 Hornby Rd., Beaver Dams, 15000802

Steuben County

Lincoln School, 373 Canisteo Ave., Hornell, 15000803

NORTH CAROLINA

Carteret County

U–352 (submarine) shipwreck and remains, (World War II Shipwrecks along the East Coast and Gulf of Mexico MPS), Offshore, Beaufort, 15000804

Dare County

U–701 (submarine) shipwreck and remains, (World War II Shipwrecks along the East Coast and Gulf of Mexico MPS), Offshore, Buxton, 15000806

U–85 (submarine) shipwreck and remains, (World War II Shipwrecks along the East Coast and Gulf of Mexico MPS), Offshore, Nags Head, 15000805

NORTH DAKOTA

McIntosh County

Ashley Jewish Homesteaders Cemetery, 48th Ave., SE., Ashley, 15000807

SOUTH CAROLINA

Richland County

Alta Vista—Camp Fornace—Newman Park Historic District, Bounded by Lakewood Ave., Seaboard Airline RR., Earlewood & Marshall, Parks, Northwood, Park, Lindsay & Marlboro Sts., Columbia, 15000808

VIRGINIA

Warren County

Rockland Rural Historic District, Roughly bounded by Clarke Co. line, Shenandoah R., Winchester Rd. & Norfolk Southern RR., Front Royal, 15000809

Waynesboro Independent City, Virginia Metalcrafters Historic District, 1010 E. Main St., Waynesboro (Independent City), 15000810

WISCONSIN

Milwaukee County

APPOMATTOX (shipwreck) (Boundary Increase II), 150 yds. off Atwater Beach, Shorewood, 15000811

A request for removal has been received for the following resources:

NEBRASKA

Pawnee County

Cincinnati Bridge, (Highway Bridges in Nebraska MPS), Closed Co. Rd. over S. Fk. Big Nemaha R., 1 mi. S, .2 mi. E., of Du Bois Du Bois, 92000719

Richardson County

Rulo Bridge, (Highway Bridges in Nebraska MPS), US 159 over the Missouri R., Rulo, 92000718

Authority: 60.13 of 36 CFR part 60

Dated: October 6, 2015.

Roger Reed,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2015–27384 Filed 10–27–15; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–932]

Certain Consumer Electronics and Display Devices With Graphics Processing and Graphics Processing Units Therein; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has issued an Initial Determination and Recommended Determination on Remedy and Bonding. The ALJ found no violation of section 337. Should the Commission, however, find a violation of section 337, the ALJ recommends that the Commission issue a limited exclusion order directed to Samsung's Accused Products and a cease and desist order against Samsung. The Commission is soliciting comments on public interest issues raised by the recommended determination. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

FOR FURTHER INFORMATION CONTACT: Ronald A. Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3427. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on EDIS at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five pages, inclusive of attachments, concerning the public interest in light of the ALJ's recommended determination on remedy and bonding issued in this investigation on October 22, 2015. Comments should address whether issuance of a limited exclusion order and cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on November 16, 2015. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (Inv. No. 337–TA–932) in a prominent place on the cover page, the first page, or both. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.

Issued: October 23, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–27428 Filed 10–27–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–961]

Certain Lip Balm Products, Containers for Lip Balm, and Components Thereof; Commission Decision not To Review an Initial Determination Granting a Motion To Terminate the Investigation; Investigation Terminated in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 12) terminating the investigation as to certain respondents based on a settlement agreement, and as to all other remaining respondents based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 15, 2015, based on a complaint filed by eos Products, LLC and The Kind Group LLC, both of New York, New York. 80 *FR* 41513 (Jul. 15, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lip balm products, containers for lip balm, and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,888,391. The complaint further alleges that an industry in the United States exists or is in the process of being established. The notice of investigation named ten respondents. The Commission previously terminated respondents OraLabs, Inc., Dollar Tree, Inc. and Dollar Tree Stores, Inc. based on settlement agreements.

On September 23, 2015, the complainants filed a motion (1) to terminate Wuxi Sunmart Science and Technology Co., Ltd. a/k/a Wuxi Sunmart Group Co., Ltd. a/k/a Wuxi Shengma Science & Technology Co., Ltd., and Wuxi Sunmart Plastic Co., Ltd. (collectively, ''Sunmart'') on the basis of a settlement agreement; (2) to withdraw the complaint as to the remaining respondents, namely, CVS Health Corporation, CVS Pharmacy, Inc., Five Below Inc., Walgreens Boots Alliance, Inc., and Walgreen Co.; and (3) to stay all procedural schedule deadlines pending the resolution of the motion. Complainants filed a corrected motion on September 28, 2015. The motion included an unredacted public version of the settlement agreement. Complainants affirmed that there are no other agreements, written or oral, express or implied, between complainants and Sunmart and between complainants and the remaining respondents concerning the subject matter of the investigation. None of the other parties opposed the motion.

On September 28, 2015, the ALJ granted the motion as an ID. The ALJ found no information indicating that termination of the investigation with respect to Sunmart on the basis of the settlement agreement is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. Order No. 12 at 3. The ALJ also found no extraordinary circumstances that prevent the termination of the investigation as to the remaining respondents.

No petitions for review of the ID were filed. The Commission has determined not to review the ID. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Dated: October 22, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–27333 Filed 10–27–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received an amended complaint entitled *Certain Woven Textile Fabrics and Products Containing Same, DN 3088;* the Commission is soliciting comments on any public interest issues raised by the amended complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the amended complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of AAVN, Inc. on October 20, 2015. The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain woven textile fabrics and products containing same. The amended complaint names as respondents AQ Textiles, LLC of Greensboro, NC; Creative Textile Mills Pvt. Ltd. of India; Indo Count Industries Ltd. of India; Indo Count Global, Inc. of New York, NY; GHCL Limited of India; Grace Home Fashions LLC of New York, NY; E & E Company, Ltd. of India; E & E Company, Ltd., d/b/a JLA Home of Fremont, CA; Welspun Global Brands Ltd. of India; and Welspun USA Inc. of New York, NY. The complainant requests that the Commission issue a permanent general exclusion order, a permanent cease and desist order, and a bond upon the alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the amended complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3088'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[4] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 23, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–27444 Filed 10–27–15; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a currently approved collection: Office of Justice Programs Solicitation Template

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** 80 FR 51312, on August 24, 2015, allowing for a 60 day comment period.

DATES: The purpose of this notice is to allow for an additional 30 days for public comment Until November 27, 2015.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *maria.swineford@usdoj.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection 1121–0329

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Office of Justice of Programs.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* NA. Office of Audit, Assessment, and Management.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system. This collection is also incorporating the previously approved collection for the OJP (1121–0021 Capability Questionnaire) retitled Financial Management and system of internal controls questionnaire.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 18,604 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The estimated public burden associated with this application is 349,288 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: October 22, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–27389 Filed 10–27–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than November 9, 2015.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 9, 2015.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of October 2015.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—144 TAA PETITIONS INSTITUTED BETWEEN 9/14/15 AND 10/9/15

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
90242 ...	PSC Metals (Workers)	London, KY	09/14/15	09/13/15
90243 ...	Gildan Garments, Inc. (State/One-Stop)	Northfield, VT	09/14/15	09/11/15
90244 ...	Tech Mahindra—AT&T (State/One-Stop)	Piscataway, NJ	09/14/15	07/15/15
90245 ...	Interplex Technologies Corporation (State/One-Stop).	North Haven, CT	09/14/15	09/10/15
90246 ...	Intel (Workers)	Allentown, PA	09/14/15	08/13/15
90247 ...	Safran Labinal Power Systems (Workers)	Salisbury, MD	09/15/15	09/14/15
90248 ...	Safran Labinal Power Systems (Workers)	Salisbury, MD	09/15/15	09/14/15
90249 ...	Atlas Tube JMC Steel (Workers)	Armorel, AR	09/15/15	09/14/15
90250 ...	Bank of America (State/One-Stop)	Charlotte, NC	09/15/15	09/10/15
90251 ...	Caterpillar LPSD (Workers)	Lafayette, IN	09/15/15	08/26/15
90252 ...	Globe Energy (State/One-Stop)	Owasso, OK	09/15/15	09/15/15
90253 ...	HTC America (State/One-Stop)	Bellevue, WA	09/15/15	09/10/15

APPENDIX—144 TAA PETITIONS INSTITUTED BETWEEN 9/14/15 AND 10/9/15—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
90254 ...	Leggett & Platt Springs Manufacturing LLC (Company).	Delano, PA	09/15/15	09/14/15
90255 ...	Lufkin Industries Power Transmission (Workers)	Lufkin, TX	09/15/15	09/14/15
90256 ...	Phoenix Technology USA (Workers)	Houston, TX	09/15/15	09/14/15
90257 ...	Honeywell Scanning and Mobility (State/One-Stop).	Skaneateles Falls, NY	09/16/15	09/15/15
90258 ...	Sivantos (State/One-Stop)	Plymouth, MN	09/16/15	09/15/15
90259 ...	Dex Media (State/One-Stop)	St. Petersburg, FL	09/16/15	09/15/15
90260 ...	SK&A Information Services (State/One-Stop)	Irvine, CA	09/16/15	09/15/15
90261 ...	Verizon (Workers)	Hempstead, NY	09/16/15	09/15/15
90262 ...	EGS (formerly known as NCO Financial Systems) (State/One-Stop).	St. Joseph, MO	09/16/15	09/14/15
90263 ...	Annie's Baking LLC (State/One-Stop)	Joplin, MO	09/16/15	09/14/15
90264 ...	Electro Scientific Industries (Workers)	Portland, OR	09/17/15	09/16/15
90265 ...	Osram-Sylvania, Inc.—Glass Technologies Division (Company).	Wellsboro, PA	09/17/15	09/16/15
90266 ...	Jacques Ebert Associates (State/One-Stop)	Glen Cove, NY	09/18/15	09/17/15
90267 ...	Georgia Pacific (Union)	Phillips, WI	09/18/15	09/17/15
90268 ...	Computer Science Corporation (CSC) (State/One-Stop).	Webster, NY	09/18/15	09/17/15
90269 ...	Elster Solutions (Company)	Raleigh, NC	09/18/15	09/17/15
90270 ...	Milano Design Concept, Inc. (State/One-Stop)	Los Angeles, CA	09/21/15	09/18/15
90271 ...	Burlington Northern Santa Fe—Dilworth International Facility (State/One-Stop).	Dilworth, MN	09/21/15	09/18/15
90272 ...	Gerdau Ameristeel (State/One-Stop)	St. Paul, MN	09/21/15	09/18/15
90273 ...	Allscripts Healthcare Solutions (State/One-Stop)	South Burlington, VT	09/21/15	09/21/15
90274 ...	Legacy Measurement Solutions, Inc. (State/One-Stop).	Bristow, OK	09/21/15	09/18/15
90275 ...	Societe Generale/New Edge (State/One-Stop)	Chicago, IL	09/21/15	09/18/15
90276 ...	Target (State/One-Stop)	Brooklyn Park, MN	09/21/15	09/18/15
90277 ...	Kellogg Company (Workers)	Battle Creek, MI	09/22/15	08/28/15
90278 ...	Breg, Inc. (State/One-Stop)	Plano, TX	09/22/15	06/09/15
90279 ...	Swiss RE (State/One-Stop)	Overland Park, KS	09/22/15	09/18/15
90280 ...	SCI Box LLC (State/One-Stop)	Lamar, MO	09/22/15	09/18/15
90281 ...	Verso (Union)	Wickliffe, KY	09/22/15	09/21/15
90282 ...	L&M Radiator, Inc. (State/One-Stop)	Independence, IA	09/22/15	09/21/15
90283 ...	Equifax Inc. (State/One-Stop)	Carlisle, IA	09/22/15	09/21/15
90284 ...	Bloomington Normal Seating Company (Company).	Normal, IL	09/23/15	09/21/15
90285 ...	Alleson of Rochester (State/One-Stop)	Geneva, NY	09/23/15	09/21/15
90286 ...	Verizon Business Network Services—Conferencing Operations (State/One-Stop).	Davenport, IA	09/23/15	09/21/15
90287 ...	Blackhawk Engineering, Inc. (State/One-Stop)	Cedar Falls, IA	09/23/15	09/22/15
90288 ...	Cartus Corporation Memphis (State/One-Stop)	Memphis, TN	09/23/15	09/22/15
90289 ...	Hess Services (State/One-Stop)	Hays, KS	09/23/15	09/22/15
90290 ...	Pioneer Energy Services (State/One-Stop)	Hays, KS	09/23/15	09/22/15
90291 ...	Honeywell (State/One-Stop)	Olathe, KS	09/23/15	09/22/15
90292 ...	Wells Fargo Home Mortgage Servicing—Foreclosure & Bankruptcy Group (State/One-Stop).	West Des Moines, IA	09/23/15	09/21/15
90293 ...	Wells Fargo (State/One-Stop)	West Des Moines, IA	09/23/15	09/21/15
90294 ...	U.S. Steel Tubular Processing Houston Operations (Union).	Houston, TX	09/23/15	09/22/15
90295 ...	Wells Fargo Home Mortgage Group (State/One-Stop).	Des Moines, IA	09/23/15	09/21/15
90296 ...	Wells Fargo Home Mortgage Group (State/One-Stop).	Urbandale, IA	09/23/15	09/21/15
90297 ...	Worthington Industries (State/One-Stop)	Skiatook, OK	09/23/15	09/22/15
90298 ...	Roaring Spring Paper Products (Union)	Martinsburg, PA	09/25/15	09/22/15
90299 ...	Leon Automotive Interiors (Union)	Wyoming, MI	09/25/15	09/24/15
90300 ...	Conduit Global (State/One-Stop)	Cordova, TN	09/25/15	09/22/15
90301 ...	Kennedy Consulting (Company)	Eagle River, AK	09/25/15	09/24/15
90302 ...	Interfor-Mollalla Division (State/One-Stop)	Molalla, OR	09/25/15	09/24/15
90303 ...	Hewlett Packard (State/One-Stop)	Pontiac, MI	09/25/15	09/24/15
90304 ...	U.S. Steel Offshore Operations Houston (Union)	Houston, TX	09/25/15	09/22/15
90305 ...	HP Enterprise Services, LLC (State/One-Stop)	Des Moines, IA	09/25/15	09/21/15
90306 ...	Verizon Business Networking Services-Conferencing Operations (State/One-Stop).	Cedar Rapids, IA	09/25/15	09/21/15
90307 ...	Forest Oil Corporation (State/One-Stop)	Denver, CO	09/25/15	09/23/15
90308 ...	Arrow Engine Company (State/One-Stop)	Tulsa, OK	09/25/15	09/24/15
90309 ...	Visteon (State/One-Stop)	Holland, MI	09/25/15	09/24/15
90310 ...	Hewlett Packard (State/One-Stop)	Colorado Springs, CO	09/25/15	09/23/15

APPENDIX—144 TAA PETITIONS INSTITUTED BETWEEN 9/14/15 AND 10/9/15—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
90311 ...	NTT Data at National Life Group (State/One-Stop).	Montpelier, VT	09/25/15	09/24/15
90312 ...	Fab-Tech Inc. (State/One-Stop)	Colchester, VT	09/25/15	09/24/15
90313 ...	D+H USA Corp (State/One-Stop)	Portland, OR	09/25/15	09/24/15
90314 ...	Pacific Fir Lumber Co. (State/One-Stop)	Sheridan, OR	09/25/15	09/24/15
90315 ...	HP Enterprise (State/One-Stop)	Overland Park, KS	09/25/15	09/24/15
90316 ...	Keurig Green Mountain Coffee Roasters (State/One-Stop).	South Burlington, VT	09/25/15	09/24/15
90317 ...	Nokia Networks (State/One-Stop)	Arlington Heights, IL	09/25/15	09/23/15
90318 ...	IBM Dubuque Global Delivery Center (State/One-Stop).	Dubuque, IA	09/25/15	09/23/15
90319 ...	PPG Industries (State/One-Stop)	Burlington, IA	09/25/15	09/23/15
90320 ...	Atos Business Services Inc. (formerly Xerox) (State/One-Stop).	Cheshire, CT	09/25/15	09/25/15
90321 ...	Metso Minerals Industries, Inc. (Company)	York, PA	09/28/15	09/21/15
90322 ...	Jaylor Dental Solutions, Inc. (State/One-Stop)	Beacon, NY	09/28/15	09/15/15
90323 ...	HP Enterprise Services, LLC (State/One-Stop)	Plano, TX	09/28/15	09/22/15
90324 ...	CenturyLink (Workers)	Carlisle, PA	09/28/15	09/25/15
90325 ...	Amsco LTO (Company)	Cranston, RI	09/28/15	09/18/15
90326 ...	Auto Warehousing Company (Workers)	Normal, IL	09/28/15	09/22/15
90327 ...	Kyklos Bearings International (Union)	Sandusky, OH	09/28/15	09/18/15
90328 ...	Georgia-Pacific Corporation (State/One-Stop)	Parchment, MI	09/28/15	09/25/15
90329 ...	Blount International (Company)	Portland, OR	09/28/15	09/25/15
90330 ...	Outokumpu Stainless Pipe Co. (Union)	Wildwood, FL	09/28/15	09/25/15
90331 ...	Kimco Realty Corporation (State/One-Stop)	New Hyde Park, NY	09/28/15	09/25/15
90332 ...	LexisNexis/Matthew Bender (State/One-Stop)	Albany, NY	09/28/15	09/25/15
90333 ...	WestRock Iowa City Assembly Plant (State/One-Stop).	Iowa City, IA	09/28/15	09/25/15
90334 ...	Cummins Filtration (State/One-Stop)	Lake Mills, IA	09/28/15	09/25/15
90335 ...	Keokuk Steel Castings/Matrix Metals (State/One-Stop).	Keokuk, IA	09/28/15	09/23/15
90336 ...	Citigroup (State/One-Stop)	Urbandale, IA	09/28/15	09/25/15
90337 ...	Wilson Trailer Company (State/One-Stop)	Sioux City, IA	09/28/15	09/23/15
90338 ...	Unverferth Manufacturing Company (State/One-Stop).	Shell Rock, IA	09/28/15	09/23/15
90339 ...	Verizon Corporate Resources Group—Finance Operations (State/One-Stop).	Cedar Rapids, IA	09/28/15	09/23/15
90340 ...	Celanese Corp. (Union)	Meredosia, IL	09/29/15	09/26/15
91000 ...	TitanX Engine Cooling (Company)	Jamestown, NY	09/30/15	09/21/15
91001 ...	Palmer Johnson Yachts (Company)	Sturgeon Bay, WI	09/29/15	09/17/15
91002 ...	Newell Rubbermaid (Company)	Freeport, IL	09/29/15	09/28/15
91003 ...	Topson Downs (State/One-Stop)	Culver City, CA	09/29/15	09/28/15
91004 ...	Beyondsoft Consulting (Workers)	Boise, ID	09/30/15	09/29/15
91005 ...	ASARCO (Union)	Hayden, AZ	09/30/15	09/29/15
91006 ...	Vocollect by Honeywell (Workers)	Monroeville, PA	09/30/15	09/30/15
91007 ...	Joy Global–Brook Park Operations (Company)	Brook Park, OH	10/01/15	09/30/15
91008 ...	Expera (State/One-Stop)	Old Town, ME	10/01/15	09/30/15
91009 ...	Rheem Manufacturing (State/One-Stop)	Fort Smith, AR	10/01/15	09/30/15
91010 ...	Baker Hughes—Yukon (Workers)	Yukon, OK	10/01/15	09/30/15
91011 ...	Brown Brothers Harriman (State/One-Stop)	Jersey City, NJ	10/01/15	09/20/15
91012 ...	American Airlines (Union)	Fort Worth, TX	10/02/15	10/01/15
91013 ...	Freeport-McMoRan Mining LLC (State/One-Stop).	Tyrone, NM	10/02/15	10/01/15
91014 ...	Alfa Laval (State/One-Stop)	Broken Arrow, OK	10/02/15	10/01/15
91015 ...	Sysco (State/One-Stop)	Olathe, KS	10/02/15	10/02/15
91016 ...	Lattice Semiconductor Corporation (State/One-Stop).	Hillsboro, OR	10/05/15	10/02/15
91017 ...	Texas Aero Engine Services LLC (Union)	Fort Worth, TX	10/05/15	10/02/15
91018 ...	Thomson Inc. (State/One-Stop)	Indianapolis, IN	10/05/15	10/02/15
91019 ...	Alton Steel, Inc. (Union)	Alton, IL	10/05/15	10/02/15
91020 ...	East Wind Code LTD (Company)	New York, NY	10/05/15	10/01/15
91021 ...	Triumph Aerostructures, Vought Aircraft Division (Union).	Grand Prairie, TX	10/05/15	09/24/15
91022 ...	Horizon Well Loggin LLC (State/One-Stop)	Tulsa, OK	10/05/15	10/02/15
91023 ...	Motorola Mobility LLC (Workers)	Lawrenceville, GA	10/05/15	10/02/15
91024 ...	Applied Leverage Technology (State/One-Stop)	Sanford, ME	10/05/15	10/02/15
91025 ...	YKK (State/One-Stop)	Lawrenceburg, KY	10/06/15	10/05/15
91026 ...	Advanced Micro Devices (State/One-Stop)	Austin, TX	10/06/15	10/06/15
91027 ...	Indiana Marujun, LLC (Company)	Winchester, IN	10/06/15	10/02/15
91028 ...	American Electric Power (Union)	Lawrenceburg, IN	10/06/15	09/24/15
91029 ...	Mersen USA St Mary's—PA Corp. (Company)	St Mary's, PA	10/06/15	09/29/15

APPENDIX—144 TAA PETITIONS INSTITUTED BETWEEN 9/14/15 AND 10/9/15—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
91030 ...	Mitsubishi Motors North America (Workers)	Normal, IL	10/06/15	10/06/15
91031 ...	Vestas American Wind Technology (State/One-Stop).	Portland, OR	10/07/15	10/06/15
91032 ...	Motorola Mobility LLC (State/One-Stop)	Plantation, FL	10/07/15	10/06/15
91033 ...	Weatherford (Wireline) International (Workers)	Houston, TX	10/07/15	10/06/15
91034 ...	Covidien (Workers)	Mansfield, MA	10/07/15	10/06/15
91035 ...	Mitsubishi Motors North America, Inc. (State/One-Stop).	Normal, IL	10/08/15	10/07/15
91036 ...	Halliburton Energy Services (Workers)	Duncan, OK	10/08/15	10/07/15
91037 ...	PAI—Winona (Company)	Winona, MO	10/08/15	10/07/15
91038 ...	GC Services (Workers)	El Paso, TX	10/08/15	10/07/15
91039 ...	Foxconn Assembly (Workers)	Houston, TX	10/09/15	10/08/15
91040 ...	Verizon Business (Workers)	Cary, NC	10/09/15	10/09/15
91041 ...	Nike, Inc. (State/One-Stop)	Beaverton, OR	10/09/15	10/08/15
91042 ...	Airboss Defense Inc. (Workers)	Milton, VT	10/09/15	10/08/15
91043 ...	Q.E.P. Resources (State/One-Stop)	Tulsa, OK	10/09/15	10/08/15
91044 ...	Thermal Engineering International (a subsidiary of Babcock Power Inc.) (State/One-Stop).	Joplin, MO	10/09/15	10/08/15

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *September 14, 2015 through October 9, 2015.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,939	IPSCO Tubulars (OK) Inc., IPSCO Tubulars, Inc	Catoosa, OK	April 7, 2014.
85,939A	IPSCO Koppel Tubulars, LLC, IPSCO Tubulars, Inc., Integrated Staffing.	Ambridge, PA	April 7, 2014.
85,939B	IPSCO Tubulars (KY) Inc., IPSCO Tubulars, Inc., CM Personnel Services, Randstad, RGP, Robert Half.	Wilder, KY	April 7, 2014.
85,939C	IPSCO Tubulars Inc. D/B/A TMK–IPSCO, Employer Flexible, Kelly services, Adecco Engineering, DYSIS.	Houston, TX	April 7, 2014.
85,939D	TMK–IPSCO, IPSCO Tubulars, Inc., Sedona Staffing Services.	Camanche, IA	April 7, 2014.
85,939E	TMK–IPSCO, IPSCO Tubulars, Inc., Temps Plus Staffing	Blytheville, AR	April 7, 2014.
86,065	Cliffs Natural Resources, Inc., Tilden Mine	Ishpeming, MI	June 4, 2014.
86,065A	Cliffs Natural Resources, Inc., Empire Mine	Palmer, MI	June 4, 2014.
86,065B	United Talconite, LLC, Cliffs Natural Resources, Inc	Eveleth, MN	June 4, 2014.
86,065C	United Talconite, LLC, Cliffs Natural Resources, Inc	Forbes, MN	June 4, 2014.
86,065D	Hibbing Taconite, Cliffs Natural Resources, Inc	Hibbing, MN	June 4, 2014.
86,065E	Northshore Mining, Cliffs Natural Resources, Inc	Babbitt, MN	June 4, 2014.
86,065F	Northshore Mining, Cliffs Natural Resources, Inc	Silver Bay, MN	June 4, 2014.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
85,039	Freescale Semiconductor, Inc., Digital Networking PE/TE Division.	Austin, TX	January 28, 2013.
85,123	Elsevier, Inc., Randstad Staffing	San Diego, CA	December 10, 2013.
85,123A	Populous Group, Elsevier, Inc	San Diego, CA	March 5, 2013.
85,203	Citigroup Technology, Inc., Citigroup Banking, Enterprise Operations, etc.	Tampa, FL	April 2, 2013.
85,277	Aegis Media Americas, Dentsu Holdings USA, Inc., Shared Services, Solomon Page Technology Partners.	Boston, MA	April 8, 2013.
85,294	Pitney Bowes, Inc., Billing, Collections and Leasing Department.	Spokane, WA	April 23, 2013.
85,386	Covidien LP, Information Services Division	Mansfield, MA	June 19, 2013.
85,491	Citibank North America, Institutional Clients Group, Technology, Securities, etc.	Jersey City, NJ	August 15, 2013.
85,551	Harte Hanks Market Intelligence, Inc., Sedona Staffing, Adecco, Manpower, and Tristaff.	San Diego, CA	September 24, 1934.
85,674	Levi Strauss & Company	Eugene, OR	November 25, 2013.
85,702	JP Morgan Chase & Company, Technology Paysource	Lowell, MA	November 5, 2013.
85,749	St. Thomas Medical Group, Nashville Healthcare Solutions	Nashville, TN	December 31, 2013.
85,946	Exos, DJO LLC, TargetCW, Aerotek Commercial Staffing, and The Right Staff.	Arden Hills, MN	April 16, 2014.
86,048	Spirit AeroSystems, Inc., Spirit AeroSystems Holdings, Inc., Zero Chaos.	Tulsa, OK	May 29, 2014.
86,062	Chromalloy Southwest, Sequa Corporation	Calexico, CA	June 3, 2014.
86,073	Norwich Aero Products, Esterline Technologies, Staffworks, Consolidated Personnel Services (CPS).	Norwich, NY	June 5, 2014.
86,087	Horton Automatics, Overhead Door Corporation, Remedy Intelligent Staffing.	Corpus Christi, TX	June 16, 2014.

TA–W No.	Subject firm	Location	Impact date
86,087A	Adecco—Working on Site at Horton Automatics, Overhead Door Corporation.	Corpus Christi, TX	June 10, 2014.
86,088	Breg, Inc., Orthopedic Group, Aerotek and Diversified Solutions.	Grand Prairie, TX	June 9, 2014.
86,109	Nortek Air Solutions, Mammoth Division, Manpower	Springfield, MO	June 9, 2014.
86,128	QBE Americas, Inc., QBE Holdings, Adecco, Aerotek, Digital Intelligence Systems LLC, etc.	Moon Township, PA	June 19, 2014.
86,136	Verizon, Voice Over Internet Protocol (COIP) Order Management.	Lake Mary, FL	June 26, 2014.
90,000	Genpact WB LLC, Adecco, Kelly Services and Manpower, Genpact LLC.	Wilkes Barre, PA	January 1, 2014.
90,003	QBE Americas, Inc., QBE Holdings, Inc., Finance Department	New York, NY	January 1, 2014.
90,012	Medical Information Management Solutions, LLC, Corporate Job Bank and Perfect Placement Services.	Phoenix, AZ	January 1, 2014.
90,028	Mondelez International, Customer Service & Logistics Operations Client Service Group.	Wilkes Barre, PA	July 20, 2015.
90,028A	On-Site Leased Workers from Axelon, Collabera, IAB Solutions LLC, Kelly Services, Sunrise Systems, Inc., etc.	Wilkes Barre, PA	January 1, 2014.
90,046	ConMed, Froomeng, Engenious Design LLC, AG Engineering LLC, Evergreen, Aerotek.	Centennial, CO	January 1, 2014.
90,064	Office Depot, Inc., OfficeMax	Ottawa, IL	January 1, 2014.
90,068	Office Depot, Inc., OfficeMax	Peru, IL	January 1, 2014.
90,076	Office Depot, Inc., OfficeMax	Bristol, VA	January 1, 2014.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
86,082	AA Gear and Manufacturing, Inc., Formerly Known as PL Holdings, Inc.	Howell, MI	June 9, 2014.
86,083	Magnetation LLC, Plant 1	Keewatin, MN	June 9, 2014.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,477	AT&T Mobility Services LLC, AT&T Mobility II LLC	Atwater, CA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
86,115	GGS Information Services	Erie, PA	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
85,948	Syncreon Technology (America), Inc., Express Employment Professionals.	Allentown, PA	

I hereby certify that the aforementioned determinations were issued during the period of *August 25, 2015 through September 11, 2015.* These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 15th day of October 2015.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2015–27452 Filed 10–27–15; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–002]

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of additional materials.

SUMMARY: The Richard Nixon Presidential Library and Museum (a NARA division) is opening additional Nixon Presidential Historical Materials for public access. These materials include select White House Central Files: Subject Files and previously restricted materials from the National Security Council (NSC Files) and the Henry A. Kissinger (HAK) Office Files. In accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and § 1275.42(b) of the regulations implementing the Act (36 CFR part 1275), we have identified, inventoried, and prepared these additional textual materials for public access with certain information redacted as required by law.

DATES: The materials described in this notice will be available to the public on Monday, November 30, 2015, beginning at 9:30 a.m. PDT (12:30 p.m. EDT).

In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense by November 27, 2015.

ADDRESSES: The materials will be available for viewing at the Richard Nixon Presidential Library and Museum; 18001 Yorba Linda Blvd.; Yorba Linda, CA. You must send any written petition asserting a legal or constitutional right or privilege that would prevent or limit public access to the materials by mail to The Archivist of the United States; National Archives and Records Administration; 8601 Adelphi Rd.; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Jason Schultz, Richard Nixon Presidential Library and Museum, by telephone at 714–983–9292, or by email at *jason.schultz@nara.gov.*

SUPPLEMENTARY INFORMATION: Researchers must have a NARA researcher card to view the materials; you may obtain one when you arrive at the Library.

Description of Materials

We are making the following materials available through this notice:

1. Previously restricted textual materials. Volume: 1 cubic foot. A number of textual materials previously withheld from public access have been reviewed for release or declassified under the systematic declassification review provisions and under the mandatory review provisions of Executive Order 13526, the Freedom of Information Act (5 U.S.C. 552), or in accordance with 36 CFR 1275.56 (Public access regulations). The materials are from integral file segments for the National Security Council (NSC Files) and the Henry A. Kissinger (HAK) Office Files.

2. White House Central Files: Subject Files: Volume: 42 cubic feet. The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Through this notice, we are making the following subject categories from FG (Federal Government-Organizations) available:

FG 6–11 White House Office
FG 6–11–1 White House Staff

Dated: October 21, 2015.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2015–27339 Filed 10–27–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Announcement of *Chronicling America: Historic American Newspapers* Data Challenge

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) announces the *Chronicling America: Historic American Newspapers* Data Challenge under Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358). This challenge encourages the creation of web-based tools, data visualizations, and other creative uses of the information found in the *Chronicling America* historic newspaper database.

DATES: Competition begins on October 28, 2015, and ends June 15, 2016. NEH will announce a winner on or about July 15, 2016, unless it extends the term of the competition as provided in this notice.

FOR FURTHER INFORMATION CONTACT: Leah Weinryb Grohsgal, Senior Program Officer and NDNP Program Coordinator, Division of Preservation and Access, National Endowment for the Humanities, (202) 606–8577, or *lgrohsgal@neh.gov.*

SUPPLEMENTARY INFORMATION:

Subject of the Competition

How can you use open data to explore history? NEH invites members of the public to produce creative web-based projects demonstrating the potential for using the data found in the *Chronicling America* Web site, available at *http://chroniclingamerica.loc.gov. Chronicling America* is a Web site providing access to digitized U.S. newspapers and to information about historic newspapers. The National Digital Newspaper Program (NDNP), a joint effort between NEH and the Library of Congress, produces the site. Visit the *Chronicling America* Web site at *http://chroniclingamerica.loc.gov.* For more about the humanities, visit the NEH Web site at *www.neh.gov.*

What are we looking for? NEH encourages contestants to develop data visualizations, web-based tools, or other innovative and interesting web-based projects using the open data found in *Chronicling America.* There are over ten million pages of digitized newspapers in *Chronicling America,* published between 1836 and 1922, from towns and cities across the United States. The newspapers illuminate 19th and 20th

century American life, with stories about politics, sports, shopping, music, food, health, science, movies, and everything in between. Entries should uncover trends, display insights, explore a theme, or tell a story.

For example, entries using the *Chronicling America* newspaper data could:

—Show how local news in various places covered the World Series of baseball

—Trace the developing motion picture industry across the country

—Follow the enactment of amendments to the Constitution

—Show coverage of a historic political campaign in various locations

—Map the travels of a president across the country based on local news coverage

—Show changes in advertising logos or newspaper mastheads over time

—Track the price or adoption of consumer goods over time in different locations

—Explore tourism in different locations in the United States

—Discover how various regions of the country celebrated Thanksgiving at different times

Projects could also create data mashups that juxtapose *Chronicling America* data with other datasets or translate newspapers into different languages.

The Library of Congress has developed a user-friendly Application Program Interface (API), which can be used to explore the data contained in *Chronicling America* in many ways. You can learn more about the API at *http://chroniclingamerica.loc.gov/about/api.* Entrants must use this API to access the data, but are welcome to use existing software or tools to create their projects.

Rules for Participating in the Competition

1. *Eligibility.* To be eligible to enter this competition, you—

(a) Must register to participate in the competition under the Official Rules promulgated by NEH on *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/;*

(b) Must comply with all the requirements under this notice and the America COMPETES Act of 2010 (Pub. L. 111–358);

(c) Must either, (1) in the case of an individual or group of individuals, be citizens or permanent residents of the United States, or (2) in the case of an entity, be a non-profit incorporated in and maintaining a primary place of business in the United States and be tax-exempt under the Internal Revenue Code;

(d) Must have the permission of a parent or legal guardian to participate if you are under 18 years of age;

(e) May not be a federal entity or federal employee acting within the scope of your employment; and

(f) May not be an employee of NEH or an immediate family member (spouse, parents or step-parents, siblings and step-siblings, children and step-children, and household members).

2. If you are a federal grantee, you may not use federal funds to develop America COMPETES Act competition applications unless such use is consistent with the purpose of your grant award. If the project has received previous NEH or other federal funding, the summary should describe how this entry represents a new contribution or facet of the project.

3. If you are a federal contractor, you may not use federal funds from a contract to develop or fund efforts in support of America COMPETES Act competition applications.

4. You may not use federal facilities or consult with federal employees during the competition unless the facilities and employees are made available to all contestants participating in the competition on an equitable basis.

5. NEH will accept submissions from single individuals, entities, or groups of individuals. You may submit multiple entries, but you (or your group) will be eligible to win only one prize.

6. Using the API, contestants must create a web-based tool, data visualization, or any other web-based project that displays an interesting and innovative use of the data contained in *Chronicling America.* Contestants will need to host the Web sites they develop. All entries must be compatible with Internet Explorer 10 and above, Google Chrome, or Mozilla Firefox and contestants must provide any passwords or instructions required to gain access.

7. *Insurance.*

(a) By participating in this competition, you agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this competition, whether the injury, death, damage, or loss arises through negligence or otherwise. Provided, however, that you are not required to waive claims against NEH arising out of the unauthorized use of or disclosure by NEH of your intellectual property, trade secrets, or confidential business information.

(b) By participating in this competition, you agree to indemnify the Federal Government against third-party claims for damages arising from or related to competition activities.

(c) Based on the subject matter of the competition, the type of work that it will possibly require, and an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from participation, NEH does not require you to obtain liability insurance or demonstrate financial responsibility in order to participate in this competition.

8. *Intellectual Property.*

(a) By submitting an entry to the competition, you represent and warrant that you are the sole author and owner of the submitted entry. Entries must be your original work, and must not violate or infringe the rights of other parties, including, but not limited to, privacy, publicity, or intellectual property rights, or material that constitutes copyright or license infringement. Your entry may not contain any material that is inappropriate, indecent, obscene, hateful, defamatory, or in any way disparaging. Your entry cannot have been submitted previously in another promotion or contest of any kind.

(b) You understand and agree that if your entry is selected as a winner, NEH may modify or alter it, in its sole discretion, as deemed appropriate or necessary. The winning contestant will, in consideration of the prize to be awarded, grant to NEH and the Library of Congress an irrevocable, royalty-free, exclusive worldwide license to reproduce, distribute, copy, display, create derivative works, and publicly post, link to, and share, the winning design or parts thereof, for the purpose of the competition and for any official NEH or Library of Congress purpose.

9. NEH reserves the right, at its sole discretion, to cancel, suspend, and/or modify the competition for any reason, which includes the right to decline to select winning entries if NEH determines that no submission satisfactorily meets the selection criteria.

10. By participating in this competition, you are providing your full and unconditional agreement to abide by the rules set forth in this notice, and by the *Chronicling America: Historic American Newspapers* Data Challenge Official Rules found at *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/.*

Process for Contestants To Register for the Competition

NEH will accept submissions only through *challenge.gov.*

1. Create an account on *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/* or log in with an existing ChallengePost account.

2. On *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/,* click ''Accept this challenge'' to register your interest in participating. This step ensures that you will receive important competition updates.

3. After you sign up on *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/,* the Web site will send a confirmation email to the email address you provided. Use the confirmation email to verify your email address. As a registered contestant, you will then be able to enter the competition by submitting an application that conforms to the requirements set forth herein.

4. Confirm that you have read and agreed to the Official Rules. Submit a descriptive summary of the entry of 1,000 words or less and a working URL with clear instructions for accessing the entry. Submit entries to *https://www.challenge.gov/challenge/chronicling-america-historic-american-newspapers-data-challenge/,* between October 28, 2015, at 9:00 a.m. EDT and June 15, 2016, at 5:00 p.m. EDT.

Amount of the Prize

NEH will award winning entries $5,000 for First Prize, $3,000 for Second Prize, and $2,000 for Third Prize. NEH may award up to three separate K–12 Student Prizes of $1,000 each. In addition to cash prizes, NEH will invite the winners of the competition to NEH in Washington, DC, to present their work at the National Digital Newspaper Program Annual Meeting and to be honored at the *Chronicling America* reception given by NEH in September, 2016. NEH will reimburse winners up to $1,500 for authorized travel expenses. For winning team entries, NEH will reimburse travel expenses for only one person from the team. This person will be the contact person listed on the entry form. If this person is not available, he or she must designate a replacement from the team. Only persons listed on the original entry form may have their travel expenses reimbursed by NEH. All other persons accompanying the winner/team representative must arrange and fund their own travel and accommodations. Awards and travel expense reimbursements may be subject to federal income taxes, and NEH will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

NEH staff will review entries, and will send the top submissions to a panel of expert judges. NEH will select a judging panel consisting of three outside experts, chosen for their achievements in the humanities and digital humanities. Judges will be fair and impartial. A judge may not have a familial or financial relationship with an individual who is a registered contestant in the competition. Judges will fully comply with all applicable government ethics requirements for federal employees.

NEH staff and judges will use the following criteria to judge the submitted entries:

1. Strong humanities content. Entries must address a subject or idea in the humanities. NEH interprets the humanities broadly, including history, language, linguistics, literature, jurisprudence, philosophy, archaeology, comparative religion, ethics, art history, and the humanistic social sciences.

2. Impact and use of data. NEH will judge entries on creative selection of data, exploration of questions in the humanities for which big data provides insight, and/or innovative techniques for data use. Entries should uncover trends, display insights, explore a theme, or tell a story.

3. Originality. While entrants are welcome to use existing software or tools, as well as other datasets, to create their projects, NEH will judge entries on originality, meaning the novelty of approach using data to address a humanities theme.

4. User appeal and clarity. Because NEH and the Library of Congress will promote winning entries to showcase the many uses for *Chronicling America* data, projects should be easily understood by a general public audience.

The judging panel will judge the submissions to advise representatives of NEH, who will choose the final winning entries. All judging will take place between on or about June 15, 2016, and on or about July 15, 2016. For questions or further information, please see the contact information listed above.

Authority: 15 U.S.C. 3719.

Dated: October 23, 2015.

Margaret F. Plympton,

Deputy Chair.

[FR Doc. 2015–27445 Filed 10–27–15; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL LABOR RELATIONS BOARD

Amendment of Statement of Organization and Functions; Restructuring of National Labor Relations Board's Field Organization

AGENCY: National Labor Relations Board.

ACTION: Notice of administrative change in status of the Des Moines, Iowa Resident Office (Region 18) of the National Labor Relations Board, which will be closed and the area will be served by agents working from other locations.

SUMMARY: The National Labor Relations Board is closing its Des Moines, Iowa Resident Office because it has determined that closing the office and serving the area with agents working at other locations, will result in significant savings while continuing to effectively serve the area currently served by this office.

DATES: *Effective Date:* The change announced above with respect to the Des Moines, Iowa office will be effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Gary Shinners, Executive Secretary, 1015 Half Street SE., Washington, DC 20570. Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has decided to close its Des Moines, Iowa Resident Office. This change is prompted by an examination of the staffing, caseloads, and rental and operating costs for the Des Moines office which has been occupied by only one investigator for more than four years. One of the two other non-investigative staff members assigned to the Des Moines office has transferred to another National Labor Board office and another has retired. Because of the declining case intake in this area, it is not expected that additional employees would be added to this office in the foreseeable future. Employees from the Agency's Minneapolis and Milwaukee offices will continue to perform the same work the sole investigator performs now, and will travel to locations in Iowa on an as-needed basis. This revision is nonsubstantive or merely procedural in nature. The Board expects no adverse impact on the

quality of casehandling as a result of the office closure.

Region 18, which handles cases arising in Minnesota, Wisconsin, Iowa, and North and South Dakota, is headed by a Regional Director, who works in the Minneapolis, Minnesota Regional office and has full authority for the processing of both unfair labor practice and representation cases in that area. Currently, the other employees in this Region work in Milwaukee, Wisconsin and Des Moines, Iowa. Under this proposal, all offices except the Des Moines office will continue to be open. The geographical area covered by the Region will not be changed.

Since May 2015, the NLRB has solicited and received feedback on the proposed closure of the Des Moines, Iowa office. The decision to close this office and restructure the Agency's operations in the manner set forth here was informed by comments from stakeholders. Because this is a general notice that is related to the organization of the NLRB, it is not a regulation or rule subject to Executive Order 12866.

Concurrent with this Notice, the NLRB is revising its Statement of Organization and Functions, among other things, to delete reference to the Des Moines, Iowa office as a place where persons can obtain service in Region 18. The Appendix to Subpart B—Description of Field Organization, which includes a complete listing of the Regional and Subregional Offices and the geographic areas served by each was last published in full at 53 FR 10305–10308 (March 30, 1988). Since that time, the Board has published numerous individual amendments to Subpart B, including 65 FR 53228, 65 FR 64723, 69 FR 31143, 69 FR 74541, 77 FR 72886, 78 FR 44602, 79 FR 69136, and 79 FR 72707. Accordingly, the Board is now publishing the Appendix to Subpart B—Description of Field Organization in its entirety because of the number of changes made to the boundaries and the age of the last publication.

Pursuant to the change set forth here, the National Labor Relations Board is amending its Statement of Organization and Functions as follows:

Part 201—Description of Organization

Subpart B—Description of Field Organization

(A) Sec. 203 is amended to read as follows:

Sec. 203 *Regional Offices.* There are 26 Regional Offices through which the Board conducts its business. Certain of the Regions have Subregional Offices or Resident Offices in addition to the central Regional Office. The areas constituting the Regions and the location of the Regional, Subregional, and Resident Offices are set forth in an appendix hereto. Each Regional Office staff is headed by a Regional Director appointed by the Board on the recommendation of the General Counsel and includes a Regional Attorney, Assistant to the Regional Director, field attorneys, field examiners, and clerical staff. Each Subregional Office is headed by an officer in charge appointed in the same manner as the Regional Directors. Each Resident Office is headed by a Resident Officer.

(B) The Appendix to Subpart B is amended to read as follows:

Appendix—Regional and Subregional Offices

Alphabetical list of States showing location in relation to Regions and Subregions. (Note that respective Region number follows Subregion number to facilitate locating areas serviced.)

Alabama	10, 15
Alaska	19
Arizona	28
Arkansas	15, 16, SR–26 (15)
California	20, 21, 31, 32
Colorado	27
Connecticut	SR–34 (1)
Delaware	4, 5
District of Columbia.	5
Florida	12, 15
Georgia	10, 12
Hawaii	SR–37 (20)
Idaho	19, 27
Illinois	13, 14, SR–33 (25)
Indiana	9, 13, 25
Iowa	SR–17 (14), 18, SR–33 (25)
Kansas	SR–17 (14)
Kentucky	9, 10, 25
Louisiana	15
Maine	1
Maryland	5, 6
Massachusetts	1
Michigan	7, SR–30 (18)
Minnesota	18
Mississippi	15, SR–26 (15)
Missouri	14, SR–17 (14), SR–26 (15)
Montana	19, 27
Nebraska	SR–17 (14), 27
Nevada	28, 32
New Hampshire.	1
New Jersey	4, 22
New Mexico	28
New York	2, 3, 29
North Carolina	SR–11 (10)
North Dakota	18
Ohio	8, 9
Oklahoma	SR–17 (14)
Oregon	SR–36 (19)
Pennsylvania	4, 5, 6
Rhode Island	1
South Carolina	SR–11 (10)
South Dakota	18
Tennessee	10, SR–11 (10), SR–26 (15)
Texas	16, 28
Utah	27
Vermont	1, 3
Virginia	5, 6, SR–11 (10)
Washington	19, SR–36 (19)
West Virginia	5, 6, 9, SR–11 (10)
Wisconsin	18, SR–30 (18)
Wyoming	27
Puerto Rico	SR–24 (12)
U.S. Virgin Islands.	SR–24 (12)

Areas Served By Regional and Subregional Offices

(Listed in numerical order except that Subregions appear directly under respective Regions. Addresses and phone numbers of the field offices can be found on the NLRB Web site at *https://www.nlrb.gov/who-we-are/regional-offices*).

Region 1. Boston, Massachusetts. Services *Maine, New Hampshire, Massachusetts,* and *Rhode Island;* in *Vermont,* services Caledonia, Essex, and Orleans Counties.

Subregion 34. Hartford, Connecticut. Services *Connecticut.*

Region 2. New York, New York. In *New York,* services the boroughs of Manhattan and the Bronx in New York City; and Orange, Putnam, Rockland, and Westchester Counties.

Region 3. Buffalo, New York. Services all *New York* State Counties except the New York City metropolitan area counties serviced by Regions 2 and 29; in *Vermont,* services Addison, Bennington, Chittenden, Franklin, Grand Isle, Lamoille, Orange, Rutland, Washington, Windham, and Windsor Counties. Persons may also obtain service at the Resident Office located in Albany, New York.

Region 4. Philadelphia, Pennsylvania. In *Pennsylvania,* services Berks, Bucks, Burlington, Carbon, Chester, Dauphin, Delaware, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Perry, Philadelphia, Pike, Schuylkill, Susquehanna, Wayne, and Wyoming Counties; in *New Jersey,* services Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem Counties; in *Delaware* services New Castle County.

Region 5. Baltimore, Maryland. Services the *District of Columbia;* in *Maryland, services all counties* with the exception of Allegany and Garrett Counties*; in Delaware, services Kent and Sussex Counties;* in *Pennsylvania,* services Adams, Cumberland, Franklin, and York Counties; in *Virginia,* services Accomack, Albemarle, Amelia, Arlington, Augusta, Brunswick,

Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Madison, Mathews, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York Counties, and the independently incorporated Virginia cities not part of, but located within or adjacent to, the territory defined by these Virginia counties; and in *West Virginia,* services Berkeley, Hampshire, Jefferson, and Morgan Counties. Persons may also obtain service at the Resident Office located in Washington, DC.

Region 6. Pittsburgh, Pennsylvania. In *Pennsylvania,* services Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Potter, Snyder, Somerset, Sullivan, Tioga, Union, Venango, Warren, Washington, and Westmoreland Counties; in *Maryland,* services Allegany and Garrett Counties; in *Virginia,* services Highland County; and in *West Virginia,* services Barbour, Braxton, Brooke, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Hancock, Hardy, Harrison, Lewis, Marion, Marshall, Mineral, Monongalia, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wood, and Wyoming Counties.

Region 7. Detroit, Michigan. In *Michigan,* services Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, St. Clair, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties. Persons may also obtain service at the Resident Office located in Grand Rapids, Michigan.

Region 8. Cleveland, Ohio. In *Ohio,* services Allen, Ashland, Ashtabula, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Guernsey, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Washington, Wayne, Williams, Wood, and Wyandot Counties.

Region 9. Cincinnati, Ohio. In *Ohio,* services Adams, Athens, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Fairfield, Fayette, Franklin, Gallia, Greene, Hamilton, Highland, Hocking, Jackson, Lawrence, Madison, Meigs, Mercer, Miami, Montgomery, Perry, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Vinton, and Warren Counties; in *Indiana,* services Clark, Dearborn, and Floyd Counties; in *West Virginia,* services Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, McDowell, Mingo, Putnam, Roane, and Wayne Counties; and in *Kentucky,* services Anderson, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Bullitt, Campbell, Carroll, Carter, Casey, Clark, Clay, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Gallatin, Garrard, Grant, Greenup, Hardin, Harlan, Harrison, Henry, Jackson, Jefferson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Madison, Magoffin, Marion, Martin, Mason, McCreary, Meade, Menifee, Mercer, Montgomery, Morgan, Nelson, Nicholas, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Scott, Shelby, Spencer, Taylor, Trimble, Washington, Whitley, Wolfe, and Woodford Counties.

Region 10. Atlanta, Georgia. In *Georgia,* services Baker, Baldwin, Banks, Barrow, Bartow, Ben Hill, Berrien, Bibb, Bleckley, Bryan, Bulloch, Burke, Butts, Calhoun, Candler, Carroll, Catoosa, Chatham, Chattahoochee, Chattooga, Cherokee, Clarke, Clay, Clayton, Cobb, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Dade, Dawson, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Effingham, Elbert, Emanuel, Evans, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lee, Liberty, Lincoln, Long, Lumpkin, Macon, Madison, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Tift, Toombs, Towns, Treutlen, Troup, Turner, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, and Worth Counties; in *Tennessee,* services Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Cumberland, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lawrence, Lewis, Lincoln, Loudon, Macon, Marion, Marshall, Maury, McMinn, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, Wayne, White, Williamson, and Wilson Counties; in *Alabama,* services Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, DeKalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston Counties; and in *Kentucky,* services Adair, Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Edmondson, Fulton, Graves, Grayson, Green, Hancock, Hart, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, Wayne, and Webster Counties.

Subregion 11. Winston-Salem, North Carolina. Services *North Carolina* and *South Carolina;* in *Virginia,* services Alleghany, Amherst, Appomattox, Bath, Bedford, Bland, Botetourt, Buchanan,

Campbell, Carroll, Charlotte, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Halifax, Henry, Lee, Mecklenburg, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties, and the independently incorporated Virginia cities not part of, but located within or adjacent to, the territory by these Virginia counties; and *in West Virginia,* services Greenbriar, Mercer, Monroe, and Summers Counties. Persons may also obtain service at the Resident Offices in Birmingham, Alabama and Nashville, Tennessee.

Region 12. Tampa, Florida. In *Florida,* services Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gadsden, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla Counties; and in *Georgia,* services Appling, Atkinson, Bacon, Brantley, Brooks, Camden, Charlton, Clinch, Coffee, Decatur, Echols, Glynn, Grady, Jeff Davis, Lanier, Lowndes, Pierce, Seminole, Thomas, Ware, and Wayne Counties.

Subregion 24. Hato Rey, Puerto Rico. Services *Puerto Rico* and the *U.S. Virgin Islands.* Persons may also obtain service at the Resident Office in Miami, Florida.

Region 13. Chicago, Illinois. Services Cook, DuPage, Kane, Lake, and Will Counties in *Illinois,* and Lake County in *Indiana.*

Region 14. St. Louis, Missouri. In *Illinois* services Adams, Alexander, Bond, Brown, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edgar, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Perry, Pike, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Scott, Shelby, Union, Wabash, Washington, Wayne, White, and Williamson Counties; and in *Missouri,* services Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Knox, Lewis, Madison, Maries, Marion, Monroe, Montgomery, Oregon, Osage, Perry, Phelps, Pike, Ralls, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Louis, St. Genevieve, Scotland, Scott, Shannon, Shelby, Stoddard, Washington, and Wayne Counties, and the Independent City of St. Louis.

Subregion 17. Kansas City, Kansas. Services *Oklahoma* and *Kansas;* in *Missouri,* services Adair, Andrew, Atchison, Barry, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Lincoln, Linn, Livingston, Macon, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Pulaski, Putnam, Randolph, Ray, Saline, Schuyler, Stone, Sullivan, Taney, Texas, Vernon, Warren, Webster, Worth, and Wright Counties; in *Iowa,* services Fremont, Mills and Pottawattamie Counties; and in *Nebraska,* services Adams, Antelope, Arthur, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cherry, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Knox, Lancaster, Lincoln, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties. Persons may also obtain service at the Resident Office in Tulsa, Oklahoma.

Region 15. New Orleans, Louisiana. Services *Louisiana;* in *Alabama,* services Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Escambia, Geneva, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox Counties; in *Arkansas,* services all counties except Miller; in *Florida,* services Bay, Calhoun, Escambia, Franklin, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, and Washington Counties; in *Mississippi,* services Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, and Yazoo Counties in; and in *Missouri,* services Dunklin, Mississippi, New Madrid, and Pemiscot Counties;

Subregion 26. Memphis, Tennessee. In *Tennessee,* services Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Lake, Lauderdale, McNairy, Madison, Obion, Shelby, Tipton, and Weakley Counties; in *Mississippi,* services Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, Desoto, Grenada, Holmes, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, and Yalobusha Counties; and in *Arkansas,* services Clay, Craighead, Crittenden, Cross, Greene, Lee, Mississippi, Poinsett, and St. Francis Counties. Persons may also obtain service at the Resident Office in Little Rock, Arkansas.

Region 16. Fort Worth, Texas. Services *Texas* with the exception of Culberson, El Paso, and Hudspeth Counties; in *Arkansas,* services Miller County. Persons may also obtain service at the Resident Offices located in Houston and San Antonio, Texas.

Region 18. Minneapolis, Minnesota. Services *North Dakota, South Dakota,* and *Minnesota;* in *Iowa,* services Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Crawford, Dallas, Davis, Decatur, Delaware, Dickinson, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Linn, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, Montgomery, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, and Wright Counties; and in *Wisconsin,* services Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Iron, Jackson, Pepin, Pierce, Polk, Price, Rusk, St. Croix, Sawyer, Taylor, Trempealeau, and Washburn Counties.

Subregion 30. Milwaukee, Wisconsin. In *Wisconsin,* services Adams, Brown, Calumet, Columbia, Crawford, Dane, Dodge, Door, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Langlade, Lincoln, Manitowoc, Marathon, Marinette, Marquette, Menominee, Milwaukee, Monroe, Oconto, Oneida, Outagamie, Ozaukee, Portage, Racine, Richland, Rock, Sauk, Shawano, Sheboygan, Vernon, Vilas, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood Counties; and in *Michigan,* services Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties.

Region 19. Seattle, Washington. Services *Alaska* and all counties in *Washington* except Clark; in *Idaho,* services Adams, Benewah, Bonner, Boundary, Clark, Clearwater, Custer, Fremont, Idaho, Kootenai, Latah, Lemhi, Lewis, Nez Perce, and Valley Counties; and in *Montana,* services Beaverhead, Broadwater, Cascade, Deer Lodge, Flathead, Gallatin, Glacier, Granite, Jefferson, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Meagher, Mineral, Missoula, Pondera, Powell, Ravalli, Sanders, Silver Bow, Teton, and Toole Counties.

Subregion 36. Portland, Oregon. Services *Oregon* and Clark County in *Washington.* Persons may also obtain service at the Resident Office located in Anchorage, Alaska.

Region 20. San Francisco, California. In *California,* services Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Mateo, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties.

Subregion 37. Honolulu, Hawaii. Services *Hawaii,* American Samoa, Guam, Palau, and the Commonwealth of the Northern Mariana Islands.

Region 21. Los Angeles, California. In *California,* services Imperial, Orange, Riverside, and San Diego Counties and that portion of Los Angeles County lying east of Harbor Freeway and South Gaffey Street, south and east of Pasadena Freeway and Arroyo Parkway, and south of Foothill Freeway (Interstate 210). Persons may also obtain service at the Resident Office located in San Diego, California.

Region 22. Newark, New Jersey. In *New Jersey,* services Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warren Counties.

Region 25. Indianapolis, Indiana. Services *Indiana,* with the exception of Clark, Dearborn, Floyd, and Lake Counties; and in *Kentucky,* services Daviess and Henderson Counties.

Subregion 33. Peoria, Illinois. In *Illinois,* services Boone, Bureau, Carroll, Cass, Champaign, DeKalb, DeWitt, Douglas, Ford, Fulton, Grundy, Hancock, Henderson, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, Knox, La Salle, Lee, Livingston, Logan, Macon, Marshall, Mason, McDonough, McHenry, McLean, Menard, Mercer, Morgan, Moultrie, Ogle, Peoria, Piatt, Putnam, Rock Island, Sangamon, Schuyler, Stark, Stephenson, Tazewell, Vermilion, Warren, Whiteside, Winnebago, and Woodford Counties; and in *Iowa,* services Clinton, Des Moines, Dubuque, Jackson, Lee, Louisa, Muscatine, and Scott Counties.

Region 27. Denver, Colorado. Services *Wyoming, Colorado,* and *Utah;* in *Nebraska,* services Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Scotts Bluff, Sheridan, and Sioux Counties; in *Idaho,* services Ada, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Butte, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, and Washington Counties; and in *Montana,* services Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, Wilbaux, and Yellowstone Counties.

Region 28. Phoenix, Arizona. Services *Arizona* and *New Mexico;* in *Nevada,* services Carson City, Clark, Lincoln, and Nye Counties; in *Texas* services Culberson, El Paso, and Hudspeth Counties. Persons may also obtain service at the Resident Offices in Albuquerque, New Mexico and in Las Vegas, Nevada.

Region 29. Brooklyn, New York. In *New York,* services the boroughs of Brooklyn, Queens, and Staten Island in New York City; and Kings, Nassau, Queens, Richmond, and Suffolk Counties.

Region 31. Los Angeles, California. In *California,* services Inyo, Kern, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties and that portion of Los Angeles County lying west of Harbor Freeway and South Gaffey Street, north and west of Pasadena Freeway and Arroyo Parkway, and north of Foothill Freeway (Interstate 210).

Region 32. Oakland, California. In *California,* services Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Fresno, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne Counties; and in *Nevada,* services Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe, and White Pine Counties, as well as the Consolidated Municipality of Carson City.

(**Authority:** 5 U.S.C. 552).

Dated: October 21, 2015.

By direction of the Board.

William B. Cowen,

Solicitor, National Labor Relations Board.

[FR Doc. 2015–27392 Filed 10–27–15; 8:45 am]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275, 50–323, and 72–26; NRC–2015–0244]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2, and Diablo Canyon Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft environmental assessment (EA) and finding of no significant impact (FONSI) related to a request to amend the Facility Operating License Nos. DPR–80, DPR–82, and SNM–2511 issued to Pacific Gas and Electric Company (PG&E), for operation of the Diablo Canyon Power Plant, Units 1 and 2, including the specific-license Independent Spent Fuel Storage Installation (hereinafter DCPP or the facility), located in San Luis Obispo County, California. The requested amendments would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

DATES: Submit comments by November 27, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments

received before this date. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by November 9, 2015.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0244. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information'' and ''Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0244 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0244.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced. The application for amendments, dated September 24, 2013, and the supplement dated December 18, 2013, contain SUNSI and are being withheld from public disclosure. A redacted version of the application for amendments, dated September 24, 2013, is available in ADAMS under Accession No. ML13268A398. The supplement dated December 18, 2013, is withheld in its entirety.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0244 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering a request to amend the Facility Operating License Nos. DPR–80, DPR–82, and SNM–2511 issued to PG&E, for operation of DCPP, located in San Luis Obispo County, California in accordance with 10 CFR 50.90. Therefore, as required by 10 CFR 51.21 and 10 CFR 51.33, the NRC has prepared a Draft EA documenting its finding. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws, or regulations that otherwise prohibit such actions.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action:

The proposed action would permit security personnel at DCPP, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that otherwise prohibit such actions.

The proposed action is in accordance with the PG&E's application dated September 24, 2013 (ADAMS Accession No. ML13268A398), as supplemented by letters dated December 18, 2013, May 15, 2014 (ADAMS Accession No. ML14135A379), and March 26, 2015 (ADAMS Accession No. ML15085A572).

The Need for the Proposed Action

The proposed action would allow the transfer, receipt, possession, transportation, importation, and use of those firearms and devices needed in the performance of official duties required for the protection of an NRC designated facility and associated special nuclear materials, consistent with the DCPP NRC-approved security plan.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action would only allow the use of those firearms and devices necessary to protect DCPP and associated special nuclear materials, consistent with the DCPP NRC-approved security plan. Therefore, the proposed action would not significantly increase the probability or consequences of accidents. In addition, the proposed action would not change the types and the amounts of any effluents that may be released offsite. There would also be no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

The proposed action would not impact land, air, or water resources, including biota. In addition, the proposed action would not result in any socioeconomic or environmental justice impacts or impacts to historic and cultural resources. Therefore, there would also be no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that the issuance of the requested

amendments would not result in significant environmental impacts.

The NRC will publish in the **Federal Register** a copy of the final environmental assessment as part of the final finding of no significant impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denying the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental conditions at the DCPP.

Alternative Use of Resources

The proposed action would not involve the use of any resources.

Agencies and Persons Consulted

The staff did not consult with any Federal agency or California state agencies regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested license amendments to permit licensee security personnel, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that would otherwise prohibit such actions.

On the basis of the information presented in this environmental assessment, the NRC concludes that the proposed action would not cause any significant environmental impact and would not have a significant effect on the quality of the human environment. In addition, the NRC has determined that an environmental impact statement is not necessary for the evaluation of this proposed action.

Other than the licensee's application dated September 24, 2013, there are no other environmental documents associated with this review. This document is available for public inspection as indicated above.

Dated at Rockville, Maryland, this 21st day of October, 2015.

For the Nuclear Regulatory Commission.

Michael T. Markley,

Chief, Plant Licensing Branch IV–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27484 Filed 10–27–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 040–09091; NRC–2011–0148]

Strata Energy, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Temporary exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a temporary exemption from certain NRC financial assurance requirements to Strata Energy, Inc. (Strata), in response to its annual financial assurance update for its Ross *In-Situ* Recovery (ISR) project. Issuance of this temporary exemption will not remove the requirement for Strata to provide adequate financial assurance through an approved mechanism, but will allow the NRC staff to further evaluate whether the State of Wyoming's separate account provision for financial assurance instruments it holds is consistent with the NRC's requirement for a standby trust agreement.

ADDRESSES: Please refer to Docket ID NRC–2011–0148 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John L. Saxton, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–0697; email: *John.Saxton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to part 40 of title 10 of the *Code of Federal Regulations* (10 CFR), appendix A, Criterion 9 and NRC Materials License SUA–1601, License Condition 9.5, Strata is required to submit to the NRC for review and approval an annual update of the financial surety to cover third-party costs for decommissioning and decontamination of the Ross ISR facility located in Crook County, Wyoming. By letter dated January 14, 2015 (ADAMS Accession No. ML14337A251), Strata submitted to the NRC its annual surety update for 2015. The NRC's staff reviewed the annual financial surety update and found the values reasonable for the required reclamation activities (ADAMS Accession No. ML14162A031). Strata maintains an approved financial assurance instrument in favor of the State of Wyoming; however, it does not have a standby trust agreement (STA) in place, as required by 10 CFR part 40, appendix A, Criterion 9.

II. Description of Action

As of December 17, 2012, NRC's uranium milling licensees, which are regulated, in part, under 10 CFR part 40, appendix A, Criterion 9, are required to have an STA in place. Criterion 9 provides that if a licensee does not use a trust as its financial assurance mechanism, then the licensee is required to establish a standby trust fund to receive funds in the event the Commission or State regulatory agency exercises its right to collect the funds provided for by surety bond or letter of credit. The purpose of an STA is to provide a separate account to hold the decommissioning funds in the event of a default.

Consistent with provisions of 10 CFR part 40, appendix A, Criterion 9(d), Strata has consolidated its NRC financial assurance sureties with those it is required to obtain by the State of Wyoming, and the financial instrument is held by the State of Wyoming. Strata has not established an STA, nor has it requested an exemption from the requirement to do so.

Wyoming law requires that a separate account be set up to receive forfeited decommissioning funds, but does not specifically require an STA. Section 35–11–424(a) of the Code of Wyoming states that ''[a]ll forfeitures collected

under the provisions of this act shall be deposited with the State treasurer in a separate account for reclamation purposes.'' Under Wyoming Department of Environmental Quality (WDEQ) financial assurance requirements, WDEQ holds permit bonds in a fiduciary fund called an agency fund. If a bond is forfeited, the forfeited funds are moved to a special revenue account. Although the Wyoming special revenue account is not an STA, the special revenue account serves a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for reclamation (*i.e.,* decommissioning purposes).

The NRC has the discretion, under 10 CFR 40.14(a), to grant an exemption from the requirements of a regulation in 10 CFR part 40 on its own initiative, if the NRC determines the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. The NRC has elected to grant Strata an exemption to the STA requirements in 10 CFR part 40, appendix A, Criterion 9, for the current surety arrangement until December 31, 2016 to allow the NRC an opportunity to evaluate whether the State of Wyoming's separate account requirements for financial assurance instruments it holds is consistent with the NRC's STA requirements.

II. Discussion

A. The Exemption Is Authorized by Law

The NRC staff concluded that the proposed exemption is authorized by law as 10 CFR 40.14(a) expressly allows for an exemption to the requirements in 10 CFR part 40, appendix A, Criterion 9, and the proposed exemption would not be contrary to any provision of the Atomic Energy Act of 1954, as amended.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The exemption is related to the financial surety. The requirement that the licensee provide adequate financial assurance through an approved mechanism (*e.g.,* a surety bond, irrevocable letter of credit) would remain unaffected by the exemption. Rather, the exemption would only pertain to the establishment of a dedicated trust in which funds could be deposited in the event that the financial assurance mechanism needed to be liquidated. The requirement in 10 CFR part 40, appendix A, Criterion 9(d), allows for the financial or surety arrangements to be consolidated within a State's similar financial assurance instrument. The NRC has determined that while the State of Wyoming does not require an STA, the special revenue account may serve a similar purpose in that forfeited funds are not deposited into the State treasury for general fund use, but instead are set aside in the special revenue account to be used exclusively for site-specific reclamation (*i.e.,* decommissioning purposes). Because the licensee remains obligated to establish an adequate financial assurance mechanism for its licensed sites, and the NRC has approved such a mechanism, sufficient funds are available in the event that the site would need to be decommissioned. A temporary delay in establishing an STA does not impact the present availability and adequacy of the actual financial assurance mechanism. Therefore, the limited exemption being issued by the NRC herein presents no undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption would not involve or implicate the common defense or security. Therefore, granting the exemption will have no effect on the common defense and security.

D. The Exemption Is in the Public Interest

The proposed exemption would enable the NRC staff to evaluate the State of Wyoming's separate account provision and the NRC's STA requirement to determine if they are comparable. The evaluation process will allow the NRC to determine whether the licensee's compliance with the state law provision will sufficiently address the NRC requirement as well, and therefore provide clarity on the implementation of the NRC regulation in this instance. Therefore, granting the exemption is in the public interest.

E. Environmental Considerations

The NRC staff has determined that granting of an exemption from the requirements of 10 CFR part 40, appendix A, Criterion 9 belongs to a category of regulatory actions which the NRC, by regulation, has determined do not individually or cumulatively have a significant effect on the environment, and as such do not require an environmental assessment. The exemption from the requirement to have an STA in place is eligible for categorical exclusion under 10 CFR 51.22(c)(25)(vi)(H), which provides that exemptions from surety, insurance, or indemnification requirements are categorically excluded if the exemption would not result in any significant hazards consideration; change or increase in the amount of any offsite effluents; increase in individual or cumulative public or occupational radiation exposure; construction impacts; or increase in the potential for or consequence from radiological accidents. The NRC staff finds that the STA exemption involves surety, insurance and/or indemnity requirements and that granting Strata this temporary exemption from the requirement of establishing a standby trust arrangement would not result in any significant hazards or increases in offsite effluents, radiation exposure, construction impacts, or potential radiological accidents. Therefore, an environmental assessment is not required.

IV. Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 40.14(a), the proposed temporary exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is in the public interest. NRC hereby grants Strata Energy, Inc. an exemption from the requirement in 10 CFR part 40, Appendix A, Criterion 9 to set up a standby trust to receive funds in the event the NRC or the State regulatory agency exercises is right to collect the surety. This exemption will expire on December 31, 2016, for the Ross ISR Project. At that time, Strata will be required to ensure compliance with the STA requirements.

Dated at Rockville, Maryland, this 21st day of October 2015.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Division of Decommissioning, Uranium Recovery and Environmental Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2015–27483 Filed 10–27–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Plant License Renewal will hold a meeting on November 17, 2015, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 17, 2015—8:30 a.m. until 5 p.m.

The Subcommittee will review Part II, Subsequent License Renewal. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 1, 2014 (79 FR 59307).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: October 20, 2015.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2015–27482 Filed 10–27–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 23, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 150 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–11, CP2016–12.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–27501 Filed 10–27–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76227; File No. SR–BX–2015–062]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Obvious Error Pilot Program

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the BX Options Rules to extend the pilot program under Chapter V, Section 3(d)(iv), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[3] The Exchange proposes to extend the pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 2013,[4] the Commission approved a proposal, on a one year pilot basis, to adopt Chapter V, Section 3(d)(iv) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 69140 (March 15, 2013), 78 FR 17255 (March 20, 2013); and 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR–BX–2013–026).

[4] Securities Exchange Act Release No. 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR–BX–2013–026).

as defined in Regulation NMS Rule 600(b)(47).[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[6] The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange extended the operation of Chapter V, Section 3(d)(iv), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Chapter V, Sections 6(c) or 6(d) during a Limit State or Straddle State in 2014,[7] and again in 2015.[8] The current pilot period expires October 23, 2015. Currently, the pilot period for the Plan is proposed to be extended until April 22, 2016.[9] The Exchange now proposes to extend the pilot program for an additional pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer (''NBBO'') in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, and removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. No later than five months prior to the expiration of the pilot period, including any extensions to the pilot period for the Plan,[10] the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:[11]

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

Each month the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State,
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
  - high execution price, low execution price,
  - number of trades for which a request for review for error was received during Straddle and Limit States,
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act,[14] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or

[5] The Plan was extended until February 20, 2015. The Plan was initially approved for a one-year pilot period, which began on April 8, 2013. Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014).

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[7] Securities Exchange Act Release No. 71900 (April 8, 2014), 79 FR 20951 (April 14, 2014) (SR–BX–2014–017).

[8] Securities Exchange Act Release No. 74334 (February 20, 2015), 80 FR 10526 (February 26, 2015) (SR–BX–2015–012).

[9] Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

[10] If the Plan extension is approved, the next data assessment will be due no later than December 18, 2015.

[11] The Exchange submitted a pilot report on September 30, 2014 and May 29, 2015.

[12] The Exchange agreed to provide similar data in the original proposal. *See* Securities Exchange Act Release No. 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR–BX–2013–026) at notes 4 and 11. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which no longer apply. The Exchange provided historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

Straddle State from certain aspects of Chapter V, Section 6.

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot to coincide with the pilot period for the Plan will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file Number SR–BX–2015–062, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27347 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76225; File No. SR–Phlx–2015–86]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Obvious Error Pilot Program

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 20, 2015, NASDAQ OMX PHLX LLC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program regarding Exchange Rule 1047(f)(v), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[3] The Exchange proposes to extend the pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 2013,[4] the Commission approved a proposal, on a one year pilot basis, to adopt Exchange Rule 1047(f)(v) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[5] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[6] The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange extended the operation of Rule 1047(f)(v), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Rule 1092(c) or (d) during a Limit State or Straddle State in 2014,[7] and again in 2015.[8] The current pilot period expires October 23, 2015. Currently, the pilot period for the Plan is proposed to be extended until April 22, 2016.[9] The Exchange now proposes to extend the pilot program for an additional pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer (''NBBO'') in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. No later than five months prior to the expiration of the pilot period, including any extensions to the pilot period for the Plan,[10] the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:[11]

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

Each month the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle

[3] Securities Exchange Act Release Nos. 69141 (March 15, 2013), 78 FR 17262 (March 20, 2013); and 69344 (April 8, 2013), 78 FR 22001 (April 12, 2013) (SR–Phlx–2013–29).

[4] Securities Exchange Act Release No. 69344 (April 8, 2013), 78 FR 22001 (April 12, 2013) (SR–Phlx–2013–29).

[5] The Plan was extended until February 20, 2015. The Plan was initially approved for a one-year pilot period, which began on April 8, 2013. Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014).

[6] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[7] Securities Exchange Act Release No. 71901 (April 8, 2014), 79 FR 20955 (April 14, 2014) (SR–Phlx–2014–21).

[8] Securities Exchange Act Release No. 74337 (February 20, 2015), 80 FR 10536 (February 26, 2015) (SR–Phlx–2015–19).

[9] Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

[10] If the Plan extension is approved, the next data assessment will be due no later than December 18, 2015.

[11] The Exchange submitted a pilot report on September 30, 2014 and May 29, 2015.

or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State,
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
  - high execution price, low execution price,
  - number of trades for which a request for review for error was received during Straddle and Limit States,
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(5) of the Act,[14] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Rule 1092.

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2015–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[12] The Exchange agreed to provide similar data in the original proposal. *See* Securities Exchange Act Release No. 69344 (April 8, 2013), 78 FR 22001 (April 12, 2013) (SR-Phlx-2013–29) at notes 4 and 12. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which no longer apply. The Exchange provided historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–Phlx–2015–86. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–86, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27345 Filed 10–27–15; 8:45 am]

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76232; File No. SR–ISE–2015–34]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Limit Up-Limit Down Obvious Error Pilot

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to extend a pilot program under .01 of Supplementary Material to Rule 720 regarding obvious errors during Limit and Straddle States in securities that underlie options traded on the Exchange and proposes to further harmonize a related provision in its rulebook. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 5, 2013,[3] the Commission approved a proposed rule change designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[4] The rules adopted in that filing established a one year pilot program to exclude transactions executed during a Limit State[5] or Straddle State[6] from the obvious error provisions of Rule 720. On February 19, 2015, the Exchange filed to extend this pilot program to its current end date of October 23, 2015.[7] The purpose of this filing is to extend the effectiveness of the pilot program to coincide with the proposed extension of the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.[8] The Exchange notes that nothing in .01 of Supplementary Material to Rule 720 prevents such execution from being reviewed on an Official's[9] own motion pursuant to sub-paragraph (c)(3) of this Rule, or a bust or adjust pursuant to paragraphs (e) through (j) of this Rule.

The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 720 would likely apply in many instances during Limit and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a Limit or Straddle State. Thus, the Exchange believes that the protections of current rule should continue while the industry gains further experience operating the Plan.

In connection with this proposed extension, each month the Exchange shall provide to the Commission, and the public, a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange. For each trade

[3] *See* Securities Exchange Act Release No. 69329 (April 5, 2013), 78 FR 21657 (April 11, 2014) (SR–ISE–2013–22) (Approval Order); 69110 (March 11, 2013) 78 FR 16726 (March 18, 2013) (SR–ISE–2013–22) (Notice of Filing).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[5] The term ''Limit State'' means the condition when the national best bid or national best offer for an underlying security equals an applicable price band, as determined by the primary listing exchange for the underlying security. *See* Rule 703A.

[6] The term ''Straddle State'' means the condition when the national best bid or national best offer for an underlying security is non-executable, as determined by the primary listing exchange for the underlying security, but the security is not in a Limit State. *See* Rule 703A.

[7] Securities Exchange Act Release No. 74335 (February 20, 2015), 80 FR 10549 (February 26, 2015) (SR–ISE–2015–07).

[8] Currently, the pilot period for the Plan is proposed to be extended to April 22, 2016. *See* Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (Ninth Amendment to the Limit-Up Limit-Down Plan).

[9] For purposes of Rule 720, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule.

on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Straddle and Limit States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange will provide to the Commission, and the public, no later than five months prior to the pilot expiration, including any extension, assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States including: (1) An evaluation of the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. This means that, if the Plan extension is approved, the next data assessment will be due no later than December 18, 2015.

Finally, the Exchange proposes to delete section (d) of Rule 703A to harmonize its rulebook. Earlier this year, the options exchanges harmonized their rules relating to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[10] The Exchange inadvertently did not remove section (d) to Rule 703A from its rulebook in this filing. This section (d) duplicates .01 of Supplementary Material to Rule 720, and as such, the Exchange proposes to delete it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[12] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 720. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extending this pilot to coincide with the Limit Up-Limit Down Plan would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan. Finally, the Exchange proposes to delete section (d) of Rule 703A to harmonize its rulebook to prevent investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

[10] Securities Exchange Act Release No. 74896 (May 7, 2015), 80 FR 27373 (May 13, 2015) (SR–ISE–2015–18).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2015–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2015–34, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

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efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76229; File No. SR–NYSE–2015–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Establishing Rules To Comply With the Requirements of the Plan To Implement a Tick Size Pilot Plan Submitted to the Commission Pursuant to Rule 608 of Regulation NMS Under the Act

October 22, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 9, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish rules to comply with the requirements of the Plan to Implement a Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the ''Plan''). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish rules to require its member organizations to comply with the requirements of the Plan to Implement a Tick Size Pilot Program (the ''Plan''),[4] which is designed to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Exchange proposes changes to its rules for a two-year pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a two year pilot to begin on May 6, 2016.

Background

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively ''Participants''), filed with the Commission, pursuant to Section 11A of the Act[5] and Rule 608 of Regulation NMS thereunder, the Plan to Implement a Tick Size Pilot Program.[6] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014 (the ''June 2014

[4] *See* Securities and Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (File No. 4–657) (''Tick Plan Approval Order'').

[5] 15 U.S.C. 78k–1.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

Order'').[7] The Plan [8] was published for comment in the **Federal Register** on November 7, 2014,[9] and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies. The Commission plans to use the Tick Size Pilot Program to access whether wider tick sizes enhance the market quality of Pilot Securities for the benefit of issuers and investors. Each Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

On October 9, 2015, the Operating Committee approved the Exchange's proposed rules as model Participant rules that would require compliance by a Participant's members with the provisions of the Plan, as applicable, and would establish written policies and procedures reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[11] As described more fully below, the proposed rules would require member organizations to comply with the Plan and provide for the widening of quoting and trading increments for Pilot Securities, consistent with the Plan.

The Tick Size Pilot Program will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Tick Pilot Program will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group (''Test Group One'') will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group (''Test Group Two'') will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor exception, and a negotiated trade exception.[14] Pilot Securities in the third test group (''Test Group Three'') will be subject to the same terms as Test Group Two and also will be subject to the ''Trade-at'' requirement to prevent price matching by a person not displaying at a price of a Trading Center's ''Best Protected Bid or ''Best Protected Offer,'' unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS [16] will apply to the Trade-at requirement.

The Tick Pilot Program also contains requirements for the collection and transmission of data to the Commission and the public. A variety of data generated during the Tick Pilot Program will be released publicly on an aggregated basis to assist in analyzing the impact of wider tick sizes on smaller capitalization stocks.[17]

Proposed Rule 67

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[18] Accordingly, the Exchange is proposing new Rule 67 to require its member organizations to comply with the quoting and trading provisions of the Plan. The proposed Rule is also designed to ensure the Exchange's compliance with the Plan.

Proposed paragraph (a)(1) of new Rule 67 would establish the following defined terms:

- ''Plan'' means the Tick Size Pilot Plan submitted to the Commission pursuant to Rule 608(a)(3) of Regulation NMS under the Act;
- ''Pilot Test Groups'' means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- ''Trading Center'' would have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Exchange Act and, for purposes of a Trading Center operated by a broker-dealer, means an independent trading unit, as defined under Rule 200(f) of Regulation SHO, within such broker-dealer.[19]
- ''Retail Investor Order'' would mean an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a retail member organization (a member organization, or a division thereof, that has been approved by the Exchange under the Exchange's retail liquidity program rule (Rule 107C) to submit Retail Investor Orders), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order is an immediate or cancel order that operates in accordance with the Exchange's retail liquidity program rule (Rule 107C). A Retail Investor Order may be an odd lot, round lot, or partial round lot.[20]
- Paragraph (a)(1)(E) would provide that all capitalized terms not otherwise defined in this rule shall have the meanings set forth in the Plan, Regulation NMS under the Act, or Exchange rules, as applicable.

Proposed Paragraph (a)(2) would state that the Exchange is a Participant in,

[7] *See* Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[9] *See* Securities and Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (File No. 4–657) (Tick Plan Filing).

[10] *See* Tick Plan Approval Order, *supra* note 5.

[11] The Operating Committee is required under Section III(C)(2) of the Plan to ''monitor the procedures established pursuant to the Plan and advise Participants with respect to any deficiencies, problems, or recommendations as the Operating Committee may deem appropriate.'' The Operating Committee is also required to ''establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan.''

[12] See Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan. Pilot Securities in Test Group One will be subject to a midpoint exception and a retail investor exception.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Section VII of the Plan.

[18] The Exchange is also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. The Exchange plans to separately propose rules that would require compliance by its member organizations with the collection of data provisions of the Plan described in Section VII of the Plan, and has reserved Paragraph (b) for such rules.

[19] 17 CFR 242.200. Independent trading unit aggregation is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, a Trading Center cannot rely on quotations displayed by that broker dealer from a different independent trading unit. As an example, an agency desk of a broker-dealer cannot rely on the quotation of a proprietary desk in a separate independent trading unit at that same broker-dealer.

[20] This definition is the approved definition for ''Retail Investor Order'' as contemplated by the Plan. It is also the same definition as given to ''Retail Orders'' pursuant to the approved rules of other national securities exchanges. *See* NYSE Rule 107C(a)(3). *See* also NYSE Arca, Inc. Rule 7.44(a)(3), BATS Y-Exchange, Inc. Rule 11.24(a)(2) and NASDAQ Stock Market LLC Rule 4780(a)(2).

and subject to the applicable requirements of, the Plan; proposed Paragraph (a)(3) would require member organizations to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan, which would allow the Exchange to enforce compliance by its member organizations with the provisions of the Plan, as required pursuant to Section II(B) of the Plan.

In addition, Paragraph (a)(4) would provide that Exchange systems would not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this proposed rule, unless such quotation or transaction is specifically exempted under the Plan.[21]

The Exchange also proposes to add Rule 67(a)(5) to provide for the treatment of Pilot Securities that drop below a $1.00 value during the Pilot Period.[22] The Exchange proposes that if the price of a Pilot Security drops below $1.00 during regular trading on any given business day, such Pilot Security would continue to be subject to the Plan and the requirements described below that necessitate member organizations to comply with the specific quoting and trading obligations for each respective Pilot Test Group under the Plan, and would continue to trade in accordance with the proposed rules below as if the price of the Pilot Security had not dropped below $1.00. However, if the Closing Price of a Pilot Security on any given business day is below $1.00, such Pilot Security would be moved out of its respective Pilot Test Group into the control group (which consists of Pilot Securities not placed into a Pilot Test Group), and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, the Exchange proposes that, at all times during the Pilot Period, Pilot Securities (whether in the control group or any Pilot Test Group) would continue to be subject to the data collection rules, which will be enumerated in reserved Rule 67(b).

The Exchange proposes Rules 67(c)–(e), which would require member organizations to comply with the specific quoting and trading obligations for each Pilot Test Group under the Plan. With regard to Pilot Securities in Test Group One, proposed Rule 67(c) would provide that no member organization may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than $0.05. However, orders priced to trade at the midpoint of the National Best Bid and National Best Offer (''NBBO'') or Best Protected Bid and Best Protect Offer (''PBBO'') and orders entered in the Exchange's Retail Liquidity Program as Retail Price Improvement Orders (''Retail Price Improvement Order'')[23] may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 62.10.[24]

With regard to Pilot Securities in Test Group Two, proposed Rule 67(d)(1) would provide that such Pilot Securities would be subject to all of the same quoting requirements as described above for Pilot Securities in Test Group One, along with the applicable quoting exceptions. In addition, proposed Rule 67(d)(2) would provide that, absent one of the listed exceptions in proposed Rule 67(d)(3) enumerated below, no member organization may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment would apply to all trades, including Brokered Cross Trades.

Paragraph (d)(3) would set forth further requirements for Pilot Securities in Test Group Two. Specifically, member organizations trading Pilot Securities in Test Group Two would be allowed to trade in increments less than $0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or PBBO;

(B) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the Best Protected Bid or the Best Protected Offer; and

(C) Negotiated Trades may trade in increments less than $0.05.

Paragraph (e)(1)–(e)(3) would set forth the requirements for Pilot Securities in Test Group Three. Member organizations quoting or trading such Pilot Securities would be subject to all of the same quoting and trading requirements as described above for Pilot Securities in Test Group Two, including the quoting and trading exceptions applicable to Test Group Two Pilot Securities. In addition, proposed Paragraph (e)(4) would provide for an additional prohibition on Pilot Securities in Test Group Three referred to as the ''Trade-at Prohibition.''[25] Paragraph (e)(4)(B) would provide that, absent one of the listed exceptions in proposed Rule 67(e)(4)(C) enumerated below, no member organization may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

Proposed Rule 67(e)(4)(C) would allow member organizations to execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(A) The order is executed by a Trading Center within a member organization that has a displayed quotation for the account of that Trading Center on a principal basis, via either a processor or an SRO Quotation Feed,[26] at a price equal to the traded-at Protected Quotation, that was displayed before the order was received,[27] but only up to the full displayed size of the Trading Center's previously displayed quote;

(B) The order consists of odd lot orders and odd lot portions of partial round lot (''PRL'') orders that are displayed on an SRO Quotation Feed, at a price equal to the traded-at Protected

[21] The Exchange is still evaluating its internal policies and procedures to ensure compliance with the Plan, and plans to separately propose rules that would address violations of the Plan.

[22] In order to provide for such treatment, the Exchange, on behalf of all Participants under the Plan, also plans to file a request for exemption under Rule 608(e) of Regulation NMS from the Plan.

[23] A Retail Price Improvement Order consists of non-displayed interest in NYSE-listed securities that is priced better than the Best Protected Bid or Best Protected Offer, as such terms are defined in Regulation NMS Rule 600(b)(57), by at least $0.001 and that is identified as such. *See* NYSE Rule 107C(a)(4).

[24] Rule 62.10 describes the minimum price variation for quoting and entry of orders in equity securities admitted to dealings on the Exchange.

[25] Proposed Rule 67(e)(4)(A) would define the ''Trade-at Prohibition'' to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

[26] By requiring the displayed quotation to be for the account of ''that Trading Center,'' the Trading Center cannot rely on any quotations it may put up on an agency basis, including a riskless principal basis. A Trading Center that is a broker-dealer also cannot rely on any quotation that is not a displayed quotation for its own account, such as the quotation of another broker-dealer, or customer of such broker-dealer.

[27] The Exchange is proposing to adopt this limitation to ensure that a Trading Center does not display a quotation after the time of order receipt solely for the purpose of trading at the price of a protected quotation without routing to that protected quotation.

Quotation, but only up to the size of the displayed quotation; [28]

(C) The order is of Block Size [29] at the time of origin and may not be:

(i) An aggregation of non-block orders;

(ii) broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or

(iii) executed on multiple Trading Centers; [30]

(D) The order is a Retail Investor Order executed with at least $0.005 price improvement;

(E) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;

(F) The order is executed as part of a transaction that was not a ''regular way'' contract;

(G) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;

(H) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security in Test Group Three;

(I) The order is identified as a Trade-at Intermarket Sweep Order;

(J) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;

(K) The order is executed as part of a Negotiated Trade;

(L) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security in Test Group Three with a price that was inferior to the price of the Trade-at transaction;

(M) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a ''stopped order''), where:

(i) The stopped order was for the account of a customer;

(ii) The customer agreed to the specified price on an order-by-order basis; and

(iii) The price of the Trade-at transaction was, for a stopped buy order, equal to the National Best Bid in the Pilot Security in Test Group Three at the time of execution or, for a stopped sell order, equal to the National Best Offer in the Pilot Security in Test Group Three at the time of execution; or

(N) The order is for a fractional share of a Pilot Security in Test Group Three, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security in Test Group Three into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

Finally, Proposed Rule 67(e)(4)(D) would prevent member organizations from breaking an order into smaller orders or otherwise effecting or executing an order to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Section 6(b)(5) of the Act,[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with the Act because it ensures that the Exchange and its member organizations would be in compliance with a Plan approved by the Commission pursuant to an order issued by the Commission in reliance on Section 11A of the Act.[33] Such approved Plan gives the Exchange authority to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange believes that the proposed rule change is consistent with the authority granted to it by the Plan to establish specifications and procedures for the implementation and operation of the Plan that are consistent with the provisions of the Plan. Likewise, the Exchange believes that the proposed rule change provides interpretations of the Plan that are consistent with the Act, in general, and furthers the objectives of the Act, in particular.

Furthermore, the Exchange is a Participant under the Plan and subject, itself, to the provisions of the Plan. The proposed rule change ensures that the Exchange's systems would not display or execute trading interests outside the requirements specified in such Plan. The proposal would also help allow market participants to continue to trade NMS Stocks within quoting and trading requirements that are in compliance with the Plan, with certainty on how certain orders and trading interests would be treated. This, in turn, will help encourage market participants to continue to provide liquidity in the marketplace.

Because the Plan supports further examination and analysis on the impact of tick sizes on the trading and liquidity of the securities of small capitalization companies, and the Commission believes that altering tick sizes could result in significant market-wide benefits and improvements to liquidity and capital formation, adopting rules that enforce compliance by its member organizations with the provisions of the Plan would help promote liquidity in the marketplace and perfect the mechanism of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the trading and quoting requirements

[28] Proposed Supplementary Material .10 to Rule 67(e)(4)(C)(ii) would further provide that, for purposes of sub-paragraph (ii), a member organization is prohibited from breaking a round lot order or round lot portion of a PRL into odd lot orders to avoid the restrictions contained in this Rule.

[29] ''Block Size'' is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[30] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the Trade-at exemption provided under proposed Rule 67(e)(4)(C)(C), unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan (*See* footnote 28). For example, if an exchange has a Protected Bid of 3,000 shares, with 2,000 shares in reserve, and receives a 5,000 share order to sell, the exchange would be able to execute the entire 5,000 share order without having to route to an away market at any other Protected Bid at the same price. If, however, that exchange only has 1,000 shares in reserve, the entire order would not be able to be executed on that exchange, and the exchange would only be able to execute 3,000 shares and route the rest to away markets at other Protected Bids at the same price, before executing the 1,000 shares in reserve. The same analysis would hold true at the next price point, if the size of the incoming order would exceed all available shares at the first price, and the remaining shares to be executed would be 5,000 shares or more.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78k–1.

specified in the Plan, of which other equities exchanges are also Participants. Other competing national securities exchanges are subject to the same trading and quoting requirements specified in the Plan. Therefore, the proposed changes would not impose any burden on competition, while providing certainty of treatment and execution of trading interests on the Exchange to market participants in NMS Stocks that are acting in compliance with the requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–2015–46 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27349 Filed 10–27–15; 8:45 am]

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[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76231; File No. SR–BATS–2015–91]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 20.6, Nullification and Adjustment of Options Transactions Including Obvious Errors

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal for the Exchange's equity options platform (''BATS Options'') to extend the pilot program that suspends certain obvious error provisions of Rule 20.6 during limit up-limit down states in securities that underlie options traded on the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Exchange adopted new Rule 20.6 related to the adjustment and nullification of transactions that occur on the Exchange's equity options platform (''BATS Options'').[5] Interpretation and Policy .01 to Rule 20.6 is designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 74556 (March 20, 2015), 80 FR 16031 (March 26, 2015) (SR–BATS–2014–067).

Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Specifically, pursuant to a pilot program set forth in Interpretation and Policy .01 to Rule 20.6, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a ''Limit State'' or ''Straddle State,'' as such terms are defined in the Plan.

The purpose of this filing is to extend the effectiveness of the pilot program of Interpretation and Policy .01 of Rule 20.6 to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange also proposes to amend a cross-reference contained within Interpretation and Policy .01, as described below.

The Exchange believes the benefits to market participants from Interpretation and Policy .01 should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 20.6 would likely apply in many instances during Limit States and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a Limit State or Straddle State. Thus, the Exchange believes that the protections of the current rule should continue while the industry gains further experience operating the Plan. Rather than extending the pilot program to a specific date, the Exchange proposes to extend the pilot to coincide with the operation of the Plan, which is also a pilot program.[7]

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, each month the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The Exchange agrees to provide the analysis and data to the Commission to help evaluate the impact of the pilot program no later than five months prior to the pilot expiration, including any extensions. If the Plan extension is approved, the next data assessment will be due on December 18, 2015.

As noted above, pursuant to the pilot program, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a Limit State or Straddle State, as such terms are defined in the Plan. The Exchange, however, retains authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of Rule 20.6 and to bust or adjust transactions pursuant to provisions governing Significant Market Events, as defined in the Rule, trading halts, erroneous prints and quotes in the underlying security, and in connection with stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. Subsequent to the adoption of new Rule 20.6, the Exchange adopted a provision, paragraph (k), which governs erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The Exchange proposes to extend the authority to nullify transactions pursuant to paragraph (k) even in the event of a Limit State or Straddle State for the underlying security, thereby excluding such provision from the pilot program. The Exchange notes that other options exchanges that have a provision governing erroneous trades occurring from disruptions and/or malfunctions of Exchange systems have also excluded such provision from the pilot program.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act [10] because it would promote just and equitable principles of trade, remove

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[7] Currently, the pilot period for the Plan is proposed to be extended to April 22, 2016. *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

[8] *See, e.g.,* NYSE MKT Rule 975NY, Interpretation and Policy .03, which excludes paragraph (l) of Rule 975NY from the pilot program; *see also,* CBOE Rule 6.25, Interpretation and Policy .01, which excludes Interpretation and Policy .05 from the pilot program.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of, a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 20.6. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot to coincide with the pilot period for the Limit Up-Limit Down Plan would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan. The Exchange also believes it is necessary and appropriate in the interest of promoting fair and orderly markets to retain authority to nullify erroneous trades occurring from disruptions and/or malfunctions of Exchange systems without regard to whether the underlying security was in a Limit State or Straddle State. As noted above, this will ensure consistency with the rules of other options exchanges.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–91. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–91, and should be submitted on or before November 18, 2015.

[11] *Id.*

[12] *See supra* note 7.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27351 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76235; File No. SR–CBOE–2015–095]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revisions to the Registered Options Principal Examination

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is filing revisions to the content outline and selection specifications for the Registered Options Principal (Series 4) examination program.[5] The proposed revisions update the material to reflect changes to the laws, rules and regulations covered by the examination and to incorporate the functions and associated tasks currently performed by a Registered Options Principal. In addition, CBOE is proposing to make changes to the format of the content outline. CBOE is not proposing any textual changes to the By-Laws, Schedules to the By-Laws or Rules of CBOE. CBOE is proposing these revisions to adopt the revised Series 4 examination program of the Financial Industry Regulatory Authority, Inc. (''FINRA''). FINRA currently administers Series 4 examinations on behalf of CBOE.

The revised content outline is attached.[6] The Series 4 selection specifications were submitted to the Commission under separate cover by FINRA. FINRA submitted the Series 4 selection specifications in connection with a FINRA filing to revise its Series 4 Examination Program.[7] CBOE is in agreement with the selection specifications submitted by FINRA.

The text of the [sic] proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 6(c)(3) of the Act[8] authorizes CBOE to prescribe standards of training, experience, and competence for persons associated with CBOE Trading Permit Holders (''TPH''). In accordance with that provision, CBOE has developed examinations that are designed to establish that persons associated with CBOE TPHs have attained specified levels of competence and knowledge, consistent with applicable registration requirements under CBOE rules. CBOE periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

CBOE Rule 9.2 states that no TPH organization shall be approved to transact options business with the public until those persons associated with it who are designated as Options Principals have been approved by and registered with the Exchange. Rule 9.2 states that persons engaged in the supervision of options sales practices or a person to who the designated general partner or executive officer or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. CBOE Rule 9.2 further requires successful completion of an examination prescribed by the Exchange in order to qualify for registration as an Options Principal. The Series 4 examination, an industry-wide examination, has been designed for this purpose, and tests a candidate's knowledge of options trading generally, the industry rules applicable to trading of option contracts, and the rules of registered clearing agencies for options. The Series 4 examination covers, among other things, equity options, foreign currency options, and index options.

In consultation with a committee of industry representatives, including representatives from CBOE, FINRA recently undertook a review of the Series 4 examination program. As a result of this review, FINRA filed revisions to the content outline to reflect changes to the laws, rules and regulations covered by the examination and to incorporate the functions and associated tasks currently performed by a Registered Options Principal. FINRA also made changes to the format of the content outline.[9] CBOE is filing these changes to adopt FINRA's revised Series 4 examination program.

Current Content Outline

The current content outline is divided into three sections. The following are the three sections and the number of questions associated with each of the

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] CBOE is also proposing corresponding revisions to the Series 4 question bank. CBOE is submitting this filing for immediate effectiveness pursuant to Section 19(b)(3)(A) of the act and Rule 19b–4(f)(1) thereunder.

[6] The Commission notes that the revised content outline is attached to the filing, not to this Notice. The content outline is available as part of the filing on CBOE's Web site.

[7] *See* Securities Exchange Act Release No. 75246 (June 18, 2015), 80 FR 36388 (June 24, 2015) (SR–FINRA–2015–018).

[8] 15 U.S.C. 78f(c)(3).

[9] *See* Securities Exchange Act Release No. 75246 (June 18, 2015), 80 FR 36388 (June 24, 2015) (SR–FINRA–2015–018).

sections, denoted Section 1 through Section 3:

1. Options Investment Strategies, 34 questions;

2. Supervision of Sales Activities and Trading Practices, 75 questions; and

3. Supervision of Employees, Business Conduct, and Recordkeeping and Reporting Requirements, 16 questions.

Each section also includes the applicable laws, rules and regulations associated with that section. The current content outline also includes a preface (addressing, among other things, the purpose, administration and scoring of the examination), sample questions and reference materials.

Proposed Revisions

CBOE is proposing to divide the content outline into six major job functions that are performed by a Registered Options Principal. The following are the six major job functions, denoted Function 1 through Function 6, with the associated number of questions:

Function 1: Supervise the Opening of New Options Accounts, 21 questions;

Function 2: Supervise Options Account Activities, 25 questions;

Function 3: Supervise General Options Trading, 30 questions;

Function 4: Supervise Options Communications, 9 questions;

Function 5: Implement Practices and Adhere to Regulatory Requirements, 12 questions; and

Function 6: Supervise Associated Persons and Personnel Management Activities, 28 questions.

CBOE is proposing to adjust the number of questions assigned to each major job function to ensure that the overall examination better reflects the key tasks performed by a Registered Options Principal. The questions on the revised Series 4 examination will place greater emphasis on key tasks such as supervision of registered persons, sales practices and compliance.

Each function also includes specific tasks describing activities associated with performing that function. There are four tasks (1.1–1.4) associated with Function 1; four tasks (2.1–2.4) associated with Function 2; four tasks (3.1–3.4) associated with Function 3; four tasks (4.1–4.4) associated with Function 4; two tasks (5.1–5.2) associated with Function 5; and four tasks (6.1–6.4) associated with Function 6.[10] By way of example, one such task (Task 4.2) is review options retail communications and determine appropriate approval.[11] Further, the content outline lists the knowledge required to perform each function and associated tasks (*e.g.*, types of retail communications, required approvals).[12] In addition, where applicable, the content outline lists the laws, rules and regulations a candidate is expected to know to perform each function and associated tasks. These include the applicable FINRA Rules (*e.g.* FINRA Rule 2220), NASD Rules (*e.g.*, NASD Rule 2711(i)), CBOE Rules (*e.g.*, CBOE Rule 9.21) and SEC rules (*e.g.*, SEA Rule 135a).[13] FINRA conducted a job analysis study of Registered Options Principals, which included the use of a survey, in developing each function and associated tasks and updating the required knowledge set forth in the revised content outline. The functions and associated tasks, which appear in the revised content outline for the first time, reflect the day-to-day activities of a Registered Options Principal.

As noted above, CBOE also is proposing to revise the content outline to reflect changes to the laws, rules and regulations covered by the examination. Among other revisions, CBOE is proposing to revise the content outline to reflect the adoption of rules in the CBOE rulebook (for example CBOE Rule 3.6 (Persons Associated with TPH Organizations; CBOE Rule 4.24 (Supervision); CBOE Rule 6.25 (Nullification and Adjustment of Options Transactions including Obvious Errors) and CBOE Rule 12.4 (Portfolio Margin)

CBOE is proposing similar changes to the Series 4 selection specifications and question bank.

Finally, CBOE is proposing to make changes to the format of the content outline, including the preface, sample questions and reference materials. Among other changes, CBOE is proposing to: (1) Add a table of contents;[14] (2) provide more details regarding the purpose of the examination;[15] (3) provide more details on the application procedures;[16] (4) provide more details on the development and maintenance of the content outline and examination;[17] (5) explain that the passing scores are established by FINRA staff, in consultation with a committee of industry representatives, using a standard setting procedure, and that a statistical adjustment process known as equating is used in scoring exams;[18] and (6) note that each candidate will receive a score report at the end of the test session, which will indicate a pass or fail status and include a score profile listing the candidate's performance on each major content area covered on the examination.[19]

The number of questions on the Series 4 examination will remain at 125 multiple-choice questions,[20] and candidates will have 195 minutes to complete the examination. The test time will change from 180 minutes to 195 minutes because pretest items increased from 5 items to 10 items. Currently, a score of 70 percent is required to pass the examination. The passing score will change to 72 percent with the revised Series 4 examination program.

Availability of Content Outline

The revised Series 4 content outline is available on FINRA's Web site, at *www.finra.org/brokerqualifications/exams*.

CBOE is filing the proposed rule change for immediate effectiveness. CBOE will announce the proposed rule change in a *Regulatory Circular*.

2. Statutory Basis

CBOE believes that the proposed revisions to the Series 4 examination program are consistent with the provisions of Section 6(b)(5) of the Act,[21] which requires, among other things, that CBOE rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,[22] which authorizes CBOE to prescribe standards of training, experience, and competence for persons associated with CBOE TPHs. CBOE believes that the proposed revisions will further these purposes by updating the examination program to reflect changes to the laws, rules and regulations covered by the examination and to incorporate the functions and

[10] *See* Exhibit 3, Outline Pages 6–22. The Commission notes that Exhibit 3 is an exhibit to the filing, not to this Notice.

[11] *See* Exhibit 3, Outline Page 15.

[12] *See* Exhibit 3, Outline Page 15.

[13] *See* Exhibit 3, Outline Page 15.

[14] *See* Exhibit 3, Outline Page 2.

[15] *See* Exhibit 3, Outline Page 3.

[16] *See* Exhibit 3, Outline Page 3.

[17] *See* Exhibit 3, Outline Page 4.

[18] See Exhibit 3, Outline Page 5.

[19] *See* Exhibit 3, Outline Page 5.

[20] Consistent with FINRA's practice of including ''pretest'' items on certain qualification examinations, which is designed to ensure that new examination items meet acceptable testing standards prior to use for scoring purposes, the examination includes 10 additional, unidentified pretest items that do not contribute towards the candidate's score. Therefore, the examination actually consists of 135 items, 125 of which are scored. The 10 pretest items are randomly distributed throughout the examination.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(c)(3).

associated tasks currently performed by a Registered Options Principal.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The updated examination aligns with the functions and associated tasks currently performed by a Registered Options Principal and tests knowledge of the most current laws, rules, regulations and skills relevant to those functions and associated tasks. As such, the proposed revisions would make the examination more efficient and effective.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and paragraph (f)(1) of Rule 19b–4 thereunder.[24] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–095 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–095. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–095 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27355 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(1).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31878; File No. 812–14506]

Good Hill Partners LP and Good Hill ETF Trust; Notice of Application

October 22, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts (''UITs'') outside of the same group of investment companies as the Underlying Funds (defined below) to acquire shares of the Underlying Funds.

APPLICANTS: Good Hill ETF Trust (the ''Trust'') and Good Hill Partners LP (the ''Initial Adviser'').

FILING DATES: The application was filed on June 30, 2015 and amended on October 16, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 16, 2015 and should be accompanied by proof of service on the applicants, in the form of an affidavit or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, Good Hill Partners LP, 1599

Post Road East, Westport, CT 06880 Attn: William Hauf.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a business trust organized under the laws of the Commonwealth of Massachusetts and intends to register under the Act as an open-end management investment company with multiple series. Each series for which the Trust seeks the requested order will operate as an exchange traded fund (''ETF'').

2. The Initial Adviser will be the investment adviser to the series of the Trust identified and described in Appendix A to the application (''Initial Fund''). Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (defined below) (each, a ''Sub-Adviser''). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor will be a broker-dealer (''Broker'') registered under the Securities Exchange Act of 1934 (the ''Exchange Act'') and will act as distributor and principal underwriter (''Distributor'') of one or more of the Funds. The Distributor of any Fund may be an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of that Fund's Adviser and/or Sub-Advisers. No Distributor will be affiliated with any Exchange (defined below).

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (''Future Funds'' and together with the Initial Fund, ''Funds''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application. The Initial Fund and Future Funds, together, are the ''Funds.'' [1]

5. Each Fund will hold certain securities, currencies, other assets and other investment positions (''Portfolio Holdings'') selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers; and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised of foreign and domestic or solely foreign equity and/or fixed income securities (''Foreign Funds'').

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index (''Component Securities'') and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Fund may also invest up to 20% of its assets in a broad variety of other instruments including, but not limited to, repurchase agreements, reverse repurchase agreements, government securities, cash and cash equivalents, commodities, options, futures contracts, currency futures contracts, options on futures contracts, swaps, options on swaps, forward contracts or other derivatives or financial instruments (including, but not limited to, credit-linked notes, commodity-linked notes, forward commitment transactions, foreign currency forwards, indexed and inverse floating rate securities, floating and variable rate instruments, convertible instruments, preferred stocks, rights and warrants), real estate investment trusts, shares of other ETFs, UITs and exchange-traded notes, and shares of money market mutual funds or other investment companies or pooled investment vehicles, foreign currency, mortgage-backed securities, asset-backed securities, municipal debt securities, when-issued securities and delayed delivery transactions, including securities and other instruments not included in its Underlying Index but which the Fund's Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. The Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies (''130/30 Funds'') or other long/short investment strategies (''Long/Short Funds''). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day (defined below), for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site (''Web site'') by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing

[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A ''to-be-announced transaction'' or ''TBA Transaction'' is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities (''Depositary Receipts'') include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a ''depositary bank'') and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as ''Long/Short Indexes.''

Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an ''Index Provider'') or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A ''Self-Indexing Fund'' is a Fund for which an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an ''Affiliated Index Provider'') will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an ''Affiliated Index'').[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Self-Indexing Fund will post on its Web site, on each day the Fund is open, including any day when it satisfies redemption requests as required by section 22(e) of the Act (a ''Business Day''), before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

12. In addition, applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. The Adviser and any Sub-Adviser have adopted or will adopt, pursuant to rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser has adopted policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the Initial Adviser or an associated person (''Inside Information Policy''). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[9] and Inside Information Policy of each Adviser and Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit[10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of Component Securities, the inclusion or exclusion of specific Component Securities, or methodology for the calculation of the return of Component Securities, in advance of a public announcement of such changes by the Index Provider. The Adviser will also include under Item 10.C. of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below) (or in case of a sub-licensing agreement, the Adviser) must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be ''investment companies'' in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or sub-adviser (''Affiliated Accounts'') as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or sub-adviser (''Unaffiliated Accounts''. The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constituents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

[8] *See, e.g.,* rule 17j–1 under the Act and section 204A under the Advisers Act and rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) from engaging in any conduct prohibited in rule 17j–1 (''Code of Ethics'').

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing is referred to as the ''Portfolio Deposit.''

this regard, each Self-Indexing Fund's board of directors or trustees (''Board'') will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser (''Adviser Affiliates'') and Affiliated Persons of any Sub-Adviser (''Sub-Adviser Affiliates'') may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission. Applications for prior orders granted to Self-Indexing Funds have received relief to operate such funds on the basis discussed above.[11]

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[15] will be excluded from the Deposit Instruments and the Redemption Instruments;[16] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a ''Rebalancing''). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares, (*e.g.,* at least 25,000 Shares) as determined by the Adviser. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant'' which is either (1) a ''Participating Party,'' *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company (''DTC'') (''DTC Participant''), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders

[11] *See, e.g.,* Guggennheim Funds Investment Advisors, LLC, Investment Company Act Release Nos. 30560 (June 14, 2013) (notice) and 30598 (July 10, 2013) (order); Sigman Investment Advisors, LLC, Investment Company Act Release Nos. 30559 (June 14, 2013) (notice) and 30597 (July 10, 2013) (order); Transparent Value Trust, et al., Investment Company Act Release Nos. 30558 (June 14, 2013) (notice) and 30596 (July 10, 2013) (order); and Horizons ETF Trust, et al., Investment Company Act Release Nos. 30803 (November 21, 2013) (notice) and 30833 (December 17, 2013) (order).

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants (defined below) on a given Business Day.

[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Exchange on which Shares are primarily listed (''Listing Exchange''), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees (''Transaction Fees'') in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a ''Market Maker'') and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a ''mutual fund.'' Instead, each such Fund will be marketed as an ''ETF.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[22] Accordingly, with respect to Foreign Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen (15) calendar days following the tender of Creation Units for redemption.[23]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fifteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fifteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and UITs that are not advised or sponsored by the Adviser, and not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as the Underlying Funds (such management investment companies are referred to as ''Investing Management Companies,'' such UITs are referred to as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are collectively referred to as ''Funds of Funds''),[24] to acquire Underlying Fund Shares (defined below) beyond the limits of section 12(d)(1)(A) of the Act; and the Underlying Funds, and any principal underwriter for the Underlying Funds, and/or any Broker registered under the Exchange Act, to sell Underlying Fund Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The ''Underlying Funds'' are (a) the Funds and (b) any registered open-end management investment company or any series thereof that is advised by an Adviser and that, pursuant to a separate order of the Commission, in general terms, operates as an ETF that utilizes active management investment strategies. Shares of an Underlying Fund are referred to as ''Underlying Fund Shares.''

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Fund of Funds Adviser'') and may be sub-advised by investment advisers

[22] Certain countries in which a Fund may invest have historically had settlement periods of up to fifteen (15) calendar days.

[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[24] Funds of Funds do not include the Underlying Funds.

within the meaning of section 2(a)(20)(B) of the Act (each a ''Fund of Funds Sub-Adviser''). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over an Underlying Fund.[25] To limit the control that a Fund of Funds may have over an Underlying Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor (''Fund of Funds Advisory Group'') from controlling (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser (''Fund of Funds Sub-Advisory Group'').

15. Applicants propose other conditions to limit the potential for undue influence over the Underlying Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Underlying Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from an Underlying Fund by the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by an Underlying Fund, in connection with the investment by the Fund of Funds in the Underlying Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[26]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Underlying Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Underlying Fund (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Underlying Funds and not in any other investment company.

18. Applicants also note that an Underlying Fund may choose to reject a direct purchase of Underlying Fund Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Underlying Fund Shares in the secondary market, an Underlying Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a

[25] A ''Fund of Funds Affiliate'' is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. An ''Underlying Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of an Underlying Fund and any person controlling, controlled by or under common control with any of these entities.

[26] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an ''Affiliated Fund''). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions ''in-kind.''

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making ''in-kind'' purchases or ''in-kind'' redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for ''in-kind'' purchases of Creation Units and the redemption procedures for ''in-kind'' redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that ''in-kind'' purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that ''in-kind'' purchases and redemptions will be made on terms reasonable to applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating ''in-kind'' purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating ''in-kind'' redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions ''in-kind'' will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit an Underlying Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Underlying Fund Shares to and redeem its Underlying Fund Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[27] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by a Fund of Funds for the purchase or redemption of Underlying Fund Shares directly from an Underlying Fund will be based on the NAV of the Underlying Fund.[28] Applicants believe that any proposed transactions directly between the Underlying Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from an Underlying Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV .

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post

[27] Although applicants believe that most Funds of Funds will purchase Underlying Fund Shares in the secondary market and will not purchase Creation Units directly from an Underlying Fund, a Fund of Funds might seek to transact in Creation Units directly with an Underlying Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Underlying Fund Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and an Underlying Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Underlying Fund Shares in Creation Units by an Underlying Fund to a Fund of Funds and redemptions of those Underlying Fund Shares. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an Underlying Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

[28] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Underlying Fund Shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its Underlying Fund Shares to a Fund of Funds, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for a Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Fund of Funds Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Underlying Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an Underlying Fund, it will vote its Underlying Fund Shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to an Underlying Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Underlying Fund or an Underlying Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from an Underlying Fund or Underlying Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in Underlying Fund Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Underlying Fund, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''non-interested Board members'') will determine that any consideration paid by the Underlying Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Underlying Fund; (ii) is within the range of consideration that the Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Underlying Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Underlying Fund under rule 12b-1 under the Act) received from an Underlying Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Underlying Fund, in connection with the investment by the Fund of Funds in the Underlying Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Underlying Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Underlying Fund, in connection with the investment by the Investing Management Company in the Underlying Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Underlying Fund) will cause an Underlying Fund to purchase a security in any Affiliated Underwriting.

7. The Board of an Underlying Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Underlying Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Underlying Fund. The Board of the Underlying Fund will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Underlying Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Underlying Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Underlying Fund.

8. Each Underlying Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Underlying Fund

exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board of the Underlying Fund were made.

9. Before investing in an Underlying Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Underlying Fund Shares in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Underlying Fund of the investment. At such time, the Fund of Funds will also transmit to the Underlying Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Underlying Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Underlying Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Underlying Fund to acquire securities of one or more investment companies for short term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2015–27372 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76228; File No. SR–ISEGemini–2015–22]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Limit Up-Limit Down Obvious Error Pilot

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

ISE Gemini proposes to extend a pilot program under .01 of Supplementary Material to Rule 720 regarding obvious errors during Limit and Straddle States in securities that underlie options traded on the Exchange and proposes to further harmonize a related provision in its rulebook. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 26, 2013,[3] the Commission approved the Exchange's Form 1 application for registration as a national securities exchange. The Form 1 application included a rule designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[4] The rules adopted in that application established a pilot program to exclude transactions executed during a Limit State[5] or Straddle State[6] from the obvious error provisions of Rule 720. On February 19, 2015, the Exchange filed to extend this pilot program to its current end date of October 23, 2015.[7] The purpose of this filing is to extend the effectiveness of the pilot program to coincide with the proposed extension of the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.[8] The Exchange notes that nothing in .01 of Supplementary Material to Rule 720 prevents such execution from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Securities and Exchange Commission granted the Exchange's application for registration as a national securities exchange on July 26, 2013. *See* Securities Exchange Act Release No. Release No. 70050 (July 26, 2013), 78 FR 46622 (Aug. 1, 2013).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[5] The term ''Limit State'' means the condition when the national best bid or national best offer for an underlying security equals an applicable price band, as determined by the primary listing exchange for the underlying security. *See* Rule 703A.

[6] The term ''Straddle State'' means the condition when the national best bid or national best offer for an underlying security is non-executable, as determined by the primary listing exchange for the underlying security, but the security is not in a Limit State. *See* Rule 703A.

[7] Securities Exchange Act Release No. 74311 (February 19, 2015), 80 FR 10175 (February 25, 2015) (SR–ISE Gemini–2015–05).

[8] Currently, the pilot period for the Plan is proposed to be extended to April 22, 2016. *See* Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (Ninth Amendment to the Limit-Up Limit-Down Plan).

being reviewed on an Official's [9] own motion pursuant to sub-paragraph (c)(3) of this Rule, or a bust or adjust pursuant to paragraphs (e) through (j) of this Rule.

The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 720 would likely apply in many instances during Limit and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a Limit or Straddle State. Thus, the Exchange believes that the protections of current rule should continue while the industry gains further experience operating the Plan.

In connection with this proposed extension, each month the Exchange shall provide to the Commission, and the public, a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Straddle and Limit States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange will provide to the Commission, and the public, no later than five months prior to the pilot expiration, including any extension, assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States including: (1) An evaluation of the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. This means that, if the Plan extension is approved, the next data assessment will be due no later than December 18, 2015.

Finally, the Exchange proposes to delete section (d) of Rule 703A to harmonize its rulebook. Earlier this year, the options exchanges harmonized their rules relating to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.[10] The Exchange inadvertently did not remove section (d) to Rule 703A from its rulebook in this filing. This section (d) duplicates .01 of Supplementary Material to Rule 720, and as such, the Exchange proposes to delete it.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[12] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 720. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extending this pilot to coincide with the Limit Up-Limit Down Plan would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan. Finally, the Exchange proposes to delete section (d) of Rule 703A to harmonize its rulebook to prevent investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become

[9] For purposes of Rule 720, an Official is an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of this Rule.

[10] Securities Exchange Act Release No. 74897 (May 7, 2015), 80 FR 27415 (May 13, 2015) (SR–ISE Gemini–2015–11).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2015–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini–2015–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2015–22, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27348 Filed 10–27–15; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76224; File No. SR–NYSEArca–2015–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's Holdings

October 22, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 8, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change a representation regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's holdings. Shares of the WCM/BNY Mellon Focused Growth ADR ETF have been approved for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (''Shares'') of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the ''Fund'') under NYSE Arca Equities Rule 8.600,[4] which governs the listing

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (the ''Prior Order''). The notice with respect to the Prior Order was published in Securities Exchange Act Release No.

Continued

and trading of Managed Fund Shares.[5] The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by AdvisorShares Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] The investment adviser to the Fund is AdvisorShares Investments, LLC (the ''Adviser''). WCM Investment Management (''WCM'') is the sub-adviser and portfolio manager to the Fund (''Sub-Adviser'').

According to the Registration Statement, and as stated in the Prior Release, the Fund's investment objective is long-term capital appreciation above international benchmarks such as the BNY Mellon Classic ADR Index and the MSCI EAFE Index. WCM seeks to achieve the Fund's investment objective by selecting a portfolio of U.S. traded securities of non-U.S. organizations included in the BNY Mellon Classic ADR Index. The BNY Mellon Classic ADR Index predominantly includes ADRs and, in addition, includes other Depositary Receipts (''DRs''), which include Global Depositary Receipts (''GDRs''), Euro Depositary Receipts (''Euro DRs'') and New York Shares (''NYSs'').[7]

The Prior Notice and the Second Prior Release stated that the Fund's portfolio will typically have fewer than 30 companies. The Exchange proposes to amend such statement in the Prior Notice and the Second Prior Release to provide that, going forward, the Fund's portfolio will typically have fewer than 40 companies. The Adviser and Sub-Adviser have represented that an increase in the number of companies typically included in the Fund's portfolio would provide the Fund with additional investment opportunities to permit the Fund to meet its investment objective, as described above.

Except for the change described above, all other representations made in the Prior Release, the Second Prior Release and the Third Prior Release remain unchanged.[8] The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. Except for the change described above, all other representations made in the Prior Release, the Second Prior Release and the Third Prior Release remain unchanged. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the net asset value (''NAV'') per Share is calculated daily and that the NAV and the Disclosed Portfolio is made available to all market participants at the same time. An increase in the number of companies typically included in the Fund's portfolio from 30 to 40 would further diversify the Fund's investments and may decrease the susceptibility to manipulation of the Shares' price.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Adviser represents that the proposed change, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective. Such an increase would further the public interest by providing the Fund with additional flexibility to achieve long-term capital appreciation above international benchmarks. An increase in the number of companies typically included in the Fund's portfolio from 30 to 40 would further diversify the Fund's investments and may decrease the susceptibility to manipulation of the Shares' price.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change is designed to allow the Fund to invest in a broader range of non-U.S. equity securities thereby helping the Fund to achieve its investment objective, and will enhance competition among issues of Managed Fund Shares that invest in non-U.S. equity securities.

62344 (June 21, 2010), 75 FR 37498 (June 29, 2010) (''Prior Notice'' and, together with the Prior Order, the ''Prior Release''). The Exchange has filed a proposed rule change pursuant to Rule 19b–4 under the Act to provide that the Fund may invest in securities outside of U.S. markets, and that not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. *See* Securities Exchange Act Release No. 74271 (February 13, 2015), 80 FR 9301 (February 20, 2015) (SR–NYSEArca–2015–06) (''Second Prior Release''). The Exchange also has filed a proposed rule change pursuant to Rule 19b–4 under the Act to provide that the Fund will invest at least 80% of its total assets in American Depositary Receipts (''ADRs'') and other equity securities, including common and preferred stock, warrants, convertible securities and master limited partnerships, and that the Fund's portfolio will consist primarily of ADRs. *See* Securities Exchange Act Release No. 75100 (June 3, 2015), 80 FR 32641 (June 9, 2015) (SR–NYSEArca–2015–47) (''Third Prior Release'').

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On November 1, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[7] According to the Registration Statement, DRs, which include ADRs, GDRs, Euro DRs and NYSs, are negotiable securities that generally represent a non-U.S. company's publicly traded equity or debt. DRs may be purchased in the U.S. secondary trading market. They may trade freely, just like any other security, either on an exchange or in the over-the-counter market. Although typically denominated in U.S. dollars, DRs can also be denominated in Euros. DRs can trade on all U.S. stock exchanges as well as on many European stock exchanges.

[8] *See* note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Release.

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that an increase in the number of companies typically included in the Fund's portfolio from 30 to 40 would further diversify the Fund's investments and may decrease the susceptibility to manipulation of the Shares' price. For that reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2015–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–94 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27344 Filed 10–27–15; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76233; File No. SR–BOX–2015–34]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretive Material 1 to Rule 7170 To Extend the Pilot Program That Suspends Certain Obvious Error Provisions During Limit Up-Limit Down States in Securities That Underlie Options Traded on the Exchange

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2015, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretive Material 1 to Rule 7170 to extend the pilot program that suspends certain obvious error provisions during limit up-limit down states in securities that underlie options traded on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the pilot that permits the Exchange to suspend certain provisions in BOX Rule 7170 (Obvious and Catastrophic Errors) during limit up-limit down states in securities that underlie options traded on the Exchange (''Pilot''). The Pilot is currently scheduled to expire on October 23, 2015. BOX proposes to extend the pilot program to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up- Limit Down Plan'' or the ''Plan''), including any extensions to the pilot period for the Plan.[3]

The Pilot allows the Exchange to exclude transactions executed during a Limit State or Straddle State from provisions in BOX Rule 7170. This does not prevent the execution from being reviewed on the Official's own motion pursuant to sub-paragraph (c)(3) of Rule 7170, or a bust or adjust pursuant to paragraphs (e) through (k) of Rule 7170.

The remaining provisions in BOX Rule 7170 provide a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under these provisions, the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order. During a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the limit state. Consequently, the Exchange believed that these provisions would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and could produce undesirable effects.

The Exchange proposes to extend the operation of this Pilot to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan so that it may continue to analyze the impact of the Limit and Straddle States. The Exchange will also continue to evaluate whether adopting a provision for reviewing trades on its own motion during Limit and Straddle States is necessary and appropriate.

Additionally, the Exchange represents that it will conduct its own analysis concerning the elimination of the obvious error rule during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of the Pilot. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. Specifically, the Exchange agrees to an assessment that evaluates the statistical and economic impact of Straddle States on liquidity and market quality in the options markets; and assess whether the lack of obvious error rules in effect during the Straddle and Limit States is problematic.

The Exchange agrees to provide the analysis and data to the Commission to help evaluate the impact of the Pilot no later than five months prior to the pilot expiration, including any extensions. If the plan extension is approved the next data assessment will be due December 18th, 2015. On a monthly basis, the Exchange shall provide both the Commission and public a dataset containing the data for each Straddle and Limit State in optionable stocks.[4]

Finally, the Exchange proposes to remove subparagraph (d) to IM–7080–1. The Exchange believes this provision is no longer necessary and doing so will further harmonize the Exchange's Obvious Error rules with the rules of other options exchanges also on the pilot.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposal to make the pilot period coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan, will allow the Pilot to remain in effect until the end of the pilot period of the Plan to Address Extraordinary Market Volatility (''Plan'').[7] The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from the provision of BOX Rule 7170. Specifically the Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* busted trades or adjusted prices) may not be appropriate given market conditions.

Finally, the Exchange removing subparagraph (d) to IM–7080–1 will add clarity to market participants by harmonizing the Exchange's Obvious Error rules with the rules of other options exchanges also on the pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change does not impose any new or additional burden on BOX Options Participants, and only amends the current Pilot to coincide with the pilot period for the Limit-up Limit Down Plan, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or

[3] *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015)(Joint Industry Plan; Notice of Filing of the Ninth Amendment to the National Market System Plan to Address Extraordinary Market Volatility). The pilot period for the Plan is proposed to be extended through April 22, 2016.

[4] The dataset will include the options for each underlying security that reaches a limit or straddle state and has at least one (1) trade on the Exchange during the straddle or limit state. For each of those options affected the data record will contain the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state. For activity on the Exchange the data record will contain the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle or limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's straddle or limit state compared to the last available option price as reported by OPRA before the start of the straddle or limit state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving straddle or limit state (or halt if applicable) is 30% away from the price before the start of the straddle or limit state.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* supra, note 3.

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2015–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2015–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2015–34, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76221; File No. SR–C2–2015–029]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.15

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2015, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.15 (Nullification and Adjustment of Options Transactions including Obvious Errors) and to clarify that the pilot program does not prevent the nullification or adjustment of electronic transactions arising from a ''verifiable disruption or malfunction.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pilot Extension

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to obvious errors Interpretation and Policy .01 to Rule 6.15, explained in further detail below, is currently operating on a pilot program set to expire on October 23, 2015. The Exchange proposes to extend the pilot program so that it coincides with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (''Limit Up-Limit Down Plan'' or ''Plan''), including any extensions to the pilot period for the Plan. Currently the Plan Participants have proposed the 9th amendment to the Plan which, if approved, would extend the pilot period of the Plan to April 22, 2016.[3]

On April 8, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.15 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan.[4] Under the terms of this current pilot program, though options executions will generally not be subject to review as an Obvious Error or Catastrophic Error while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion pursuant to sub-paragraph (c)(3) of Rule 6.15, or a bust or adjust pursuant to paragraphs (e) through (j) of Rule 6.15.[5]

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program.[6] In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission.[7] Pursuant to a rule filing, approved on April 3, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[8] The Exchange will continue to provide the Commission with this data on a monthly basis from October 2015 through the end of the pilot. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange agrees to provide the analysis and data, to the commission, to help evaluate the impact of the pilot program no later than five months prior to the expiration of the pilot program, including any extensions. If the Plan extension is approved, the next data assessment will be submitted no later than December 18, 2015.

The Exchange is now proposing to extend the pilot period so that it coincides with the pilot period for the Plan, including any extensions to the pilot period for the Plan. The pilot will no longer have a fixed expiration date. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis to coincide with the Plan. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.15 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

Verifiable Disruptions or Malfunctions

The Exchange is also proposing to clarify that the pilot program outlined in Interpretation and Policy .01 to Rule 6.15 does not prevent the nullification or adjustment of electronic transactions arising from a verifiable disruption or malfunction. Interpretation and Policy .06 to Rule 6.15 specifies that electronic transactions arising out of a verifiable disruption or malfunction in the use or operation of any Exchange automated quotation, dissemination, execution or communication system will either be nullified or adjusted by an Official. The Exchange believes the provisions of Interpretation and Policy .06 would apply regardless of whether an underlying security to a transaction was in a limit state or straddle state. However, because Interpretation and Policy .01 specifies the other instances in which executions may be reviewed and nullified or adjusted (regardless of the pilot program), the Exchange believes adding a reference to Interpretation and Policy .06 will promote clarity in the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

[3] *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (File No. 4–631).

[4] Securities Exchange Act Release No. 69345 (April 8, 2013), 78 FR 21985 (April 12, 2013) (SR–C2–2013–013). *See also* Exchange Rule 6.15.01.

[5] *Id.*

[6] *See* letter from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, date April 4, 2013.

[7] *Id.*

[8] Securities Exchange Act Release No. 71856 (April 3, 2014), 79 FR 19676 (April 9, 2014) (SR–C2–2014–008).

Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.15. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Exchange now proposes to extend the pilot program so that it coincides with the pilot period for the Plan, including any extensions to the pilot period for the Plan. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

The proposed rule change relating to verifiable disruptions or malfunctions is consistent with these provisions as it will more accurately reflect the intentions of the Exchange regarding adjustments and nullifications while an underlying security is in a limit or straddle state. The purpose of the proposed change is to add clarity to the rule text, however, the current practices of the Exchange will remain the same. The Exchange believes the proposed rule change will help avoid confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2015–029 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2015–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2015–029, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27342 Filed 10–27–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76226; File No. SR–NASDAQ–2015–125]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Obvious Error Pilot Program

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 20, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal by The NASDAQ Options Market LLC (''NOM'') to amend Chapter V, Regulation of Trading on NOM, to extend the pilot program under Section 3(d)(iv), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[3] The Exchange proposes to extend the pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 2013, the Commission approved a proposal, on a one year pilot basis, to adopt Chapter V, Section 3(d)(iv) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[4] The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.[5] The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange extended the operation of Chapter V, Section 3(d)(iv), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Chapter V, Sections 6(c) or 6(d) during a Limit State or Straddle State in 2014,[6] and again in 2015.[7] The current pilot period expires October 23, 2015. Currently, the pilot period for the Plan is proposed to be extended until April 22, 2016.[8] The Exchange now proposes to extend the pilot program for an additional pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer (''NBBO'') in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, and removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69341 (April 8, 2013), 78 FR 21996 (April 12, 2013) (SR–NASDAQ–2013–048).

[4] The Plan was extended until February 20, 2015. The Plan was initially approved for a one-year pilot period, which began on April 8, 2013. Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014).

[5] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[6] Securities Exchange Act Release No. 71902 (April 8, 2014), 79 FR 20946 (April 14, 2014) (SR–NASDAQ–2014–033).

[7] Securities Exchange Act Release No. 74336 (February 20, 2015), 80 FR 10551 (February 26, 2015) (SR–NASDAQ–2015–016).

[8] Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. No later than five months prior to the expiration of the pilot period, including any extensions to the pilot period for the Plan,[9] the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the obvious error rules during Limit and Straddle States as follows:[10]

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

Each month the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State,
- For activity on the Exchange:
- executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
- high execution price, low execution price,
- number of trades for which a request for review for error was received during Straddle and Limit States,
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.[11]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(5) of the Act,[13] in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Chapter V, Section 6.

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot to coincide with the pilot period for the Plan will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[9] If the Plan extension is approved, the next data assessment will be due no later than December 18, 2015.

[10] The Exchange submitted a data assessment on September 30, 2014 and May 29, 2015.

[11] The Exchange agreed to provide similar data in the original proposal. *See* Securities Exchange Act Release No. 69341 (April 8, 2013), 78 FR 21996 (April 12, 2013) (SR–NASDAQ–2013–048) at notes 4 and 11. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which no longer apply. The Exchange provided historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–125. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–125, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27346 Filed 10–27–15; 8:45 am]

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[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76230; File No. SR–EDGX–2015–49]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 20.6, Nullification and Adjustment of Options Transactions Including Obvious Errors

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal for the Exchange's equity options platform (''EDGX Options'') to extend the pilot program that suspends certain obvious error provisions of Rule 20.6 during limit up-limit down states in securities that underlie options traded on the Exchange.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Exchange received approval of rules governing the trading of equity options on EDGX Options, including Rule 20.6 related to the adjustment and nullification of transactions that occur on EDGX Options.[5] Interpretation and Policy .01 to Rule 20.6 is designed to address certain issues related to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan'').[6] Specifically, pursuant to a pilot program set forth in Interpretation and Policy .01 to Rule 20.6, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a ''Limit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (SR–EDGX–2015–18).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

State'' or ''Straddle State,'' as such terms are defined in the Plan.

The purpose of this filing is to extend the effectiveness of the pilot program of Interpretation and Policy .01 of Rule 20.6 to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. The Exchange also proposes to amend a cross-reference contained within Interpretation and Policy .01, as described below. The Exchange notes that trading on EDGX Options has not yet commenced. However, the Exchange anticipates launching EDGX Options in the near future and wishes to update its rules in the interim in anticipation of such launch.

The Exchange believes the benefits to market participants from Interpretation and Policy .01 should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the obvious error provisions of Rule 20.6 would likely apply in many instances during Limit States and Straddle States. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a Limit State or Straddle State. Thus, the Exchange believes that the protections of the current rule should continue while the industry gains further experience operating the Plan. Rather than extending the pilot program to a specific date, the Exchange proposes to extend the pilot to coincide with the operation of the Plan, which is also a pilot program.[7]

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, each month the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The Exchange agrees to provide the analysis and data to the Commission to help evaluate the impact of the pilot program no later than five months prior to the pilot expiration, including any extensions. If the Plan extension is approved, the next data assessment will be due on December 18, 2015.

As noted above, pursuant to the pilot program, the Exchange excludes from certain provisions of Rule 20.6 transactions executed during a Limit State or Straddle State, as such terms are defined in the Plan. The Exchange, however, retains authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of Rule 20.6 and to bust or adjust transactions pursuant to provisions governing Significant Market Events, as defined in the Rule, trading halts, erroneous prints and quotes in the underlying security, and in connection with stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The Exchange proposes to extend the authority to nullify transactions pursuant to paragraph (k) even in the event of a Limit State or Straddle State for the underlying security, thereby excluding such provision from the pilot program. The Exchange notes that other options exchanges that have a provision governing erroneous trades occurring from disruptions and/or malfunctions of Exchange systems have also excluded such provision from the pilot program.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] In particular, the proposal is consistent with Section 6(b)(5) of the Act[10] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that

[7] Currently, the pilot period for the Plan is proposed to be extended to April 22, 2016. *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

[8] *See, e.g.,* NYSE MKT Rule 975NY, Interpretation and Policy .03, which excludes paragraph (l) of Rule 975NY from the pilot program; *see also,* CBOE Rule 6.25, Interpretation and Policy .01, which excludes Interpretation and Policy .05 from the pilot program.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit or Straddle State from certain aspects of Rule 20.6. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot to coincide with the pilot period for the Limit Up-Limit Down Plan would ensure that limit orders that are filled during a Limit or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan. The Exchange also believes it is necessary and appropriate in the interest of promoting fair and orderly markets to retain authority to nullify erroneous trades occurring from disruptions and/or malfunctions of Exchange systems without regard to whether the underlying security was in a Limit State or Straddle State. As noted above, this will ensure consistency with the rules of other options exchanges.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

[12] *See supra* note 7.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2015–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–49, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27350 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76234; File No. SR–EDGX–2015–47]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 21.17, Exchange Sharing of User Designated Risk Settings

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to authorize the Exchange's equity options platform (''EDGX Options'') to share a User's[5] risk settings with the Clearing Member[6] that clears transactions on behalf of the User.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 21.17, Exchange Sharing of User Designated Risk Settings, in order to authorize the Exchange to share any of a User's risk settings with the Clearing Member that clears transactions on behalf of the User. The Exchange notes that the proposed rule is based on and identical to BATS Exchange, Inc. (''BATS'') Rule 21.17, which is applicable to the equity options platform operated by BATS (''BATS Options'').

Under Exchange Rule 17.2(b), Options Members[7] must be Clearing Members or establish a clearing arrangement with a Clearing Member. Rule 21.13(a) provides that every Clearing Member is responsible for the clearance of EDGX Options Transactions[8] of such Clearing Member and of each User that gives up such Clearing Member's name pursuant to a letter of authorization, letter of guarantee, or other authorization given by such Clearing Member to such User, which authorization must be submitted to the Exchange. Further, no Options Member may make any transactions on the Exchange unless a letter of guarantee providing that the issuing Clearing Member accepts financial responsibilities for all EDGX Options Transactions made by the Options Member (a ''Letter of Guarantee'') has been issued for such Options Member by a Clearing Member and filed with the Exchange.

Thus, while not all Options Members are Clearing Members, all Options Members require a Clearing Member's consent to clear transactions on their behalf (or on behalf of any Sponsored Participants[9] for which the Options Member is a Sponsoring Member[10]) in order to conduct business on the Exchange. Each Options Member that transacts through a Clearing Member on the Exchange executes a Letter of Guarantee which codifies the relationship between the Options Member and the Clearing Member and provides the Exchange with notice of which Clearing Members have relationships with which Options Members. The Clearing Member that guarantees the Options Member's transactions on the Exchange has a financial interest in understanding the risk tolerance of the Options Member. The proposal would provide the Exchange with authority to directly provide Clearing Members with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Users.

At this time, the risk settings covered by this proposal are set forth in Rule 21.16, entitled Risk Monitor Mechanism.[11] The Exchange may adopt additional rules providing for Options Member designated risk settings other than those provided in Rule 21.16 that could be shared with an Options Member's Clearing Member under the proposal and the Exchange would announce these additional risk settings by issuing a Trade Desk Notice.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] A User is defined as ''any Options member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access).'' *See* Exchange Rule 16.1(a)(63).

[6] A Clearing Member is defined as ''an Options Member that is self-clearing or an Options Member that clears EDGX Options Transactions for other Members of EDGX Options.'' *See* Exchange Rule 16.1(a)(15).

[7] An Options Member is defined as ''a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an 'Options Order Entry Firm' or 'Options Market Maker.' '' *See* Exchange Rule 16.1(a)(38).

[8] An EDGX Options Transactions is defined as ''a transaction involving an options contract that is effected on or through EDGX Options or its facilities or systems.'' *See* Exchange Rule 16.1(a)(11).

[9] A Sponsored Participant is defined as ''a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(z).

[10] A Sponsoring Member is defined as ''a Member that is a registered broker-dealer and that has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.'' *See* Exchange Rule 1.5(aa).

[11] *See* Exchange Rule 21.16.

Act.[12] In particular, the proposal is consistent with Section 6(b)(5) of the Act[13] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change will allow the Exchange to directly provide an Options Member's designated risk settings to the Clearing Member that clears trades on behalf of the Options Member. Because a Clearing Member that executes a clearing Letter of Guarantee on behalf of an Options Member guarantees all transactions of that Options Member, and therefore bears the risk associated with those transactions, it is appropriate for the Clearing Member to have knowledge of what risk settings the Options Member may utilize within the Trading System.[14] The proposal will permit Clearing Members who have a financial interest in the risk settings of Options Members with whom the Clearing Participant has entered into a Letter of Guarantee to better monitor and manage the potential risks assumed by Clearing Members, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure and aiding Clearing Members in complying with the Act. To the extent a Clearing Member might reasonably require an Options Member to provide access to its risk setting as a prerequisite to continuing to clear trades on the Options Member's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on Options Members and ensures that Clearing Members are receiving information that is up to date and conforms to the settings active in the Trading System.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of an Options Member's transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any Options Member. Any Options Member that does not wish to share its designated risk settings with its Clearing Member could avoid sharing such settings by becoming a Clearing Member.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[15] and paragraph (f)(6) of Rule 19b–4 thereunder.[16] Consequently, because the foregoing proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would permit the Exchange to allow Clearing Members to monitor and manage the potential risks assumed by Options Members upon the commencement of the operations of EDGX Options which is scheduled for November 2, 2015. The Exchange notes that this functionality is already available on other exchanges. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[21] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–EDGX–2015–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] Trading System is defined as ''the automated trading system used by EDGX Options for the trading of options contracts.'' *See* Exchange Rule 16.1(a)(59).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–47 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27354 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76244; File No. 4–631]

Joint Industry Plan; Order Approving the Ninth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

October 22, 2015.

I. Introduction

On July 31, 2015, New York Stock Exchange LLC (''NYSE''), on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility (''Plan''): BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, National Stock Exchange, Inc., NYSE MKT LLC, and NYSE Arca, Inc. (collectively with NYSE, the ''Participants''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] a proposal to amend the Plan.[3] The proposal represents the ninth amendment to the Plan, and reflects proposed changes unanimously approved by the Participants. The amendment was published for comment in the **Federal Register** on September 18, 2015.[4] The Commission received one comment letter regarding the amendment.[5] This order approves the amendment to the Plan.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Elizabeth King, General Counsel, NYSE, to Brent Fields, Secretary, Commission, dated July 31, 2015 (''Transmittal Letter'').

[4] *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (''Notice'').

[5] *See* Letter from Donald Bollerman, Head of Markets and Sales, IEX, to Brent Fields, Secretary, Commission, dated October 16, 2015 (''IEX Letter''). IEX did not comment on the proposals set forth in the proposed amendment. In its comment letter, IEX suggested that the Commission evaluate the operation of the Plan and the experience of trading on August 24, 2015 prior to making the Plan permanent. In addition, IEX identified other areas for the Commission to consider, such as SRO opening procedures, floor-based rules, and imbalance information, in relation to trading on August 24, 2015.

II. Description of the Proposal

The amendment proposes to extend the pilot period of the Plan from October 23, 2015 to April 22, 2016. In addition, on March 30, 2015, Chicago Board Options Exchange, Incorporated (''CBOE'') provided written notice to the Participants of CBOE's intent to withdraw from the Plan. Notice of withdrawal was made pursuant to Section IX of the Plan. CBOE became a Participant due to the operation of its facility, the CBOE Stock Exchange, LLC (''CBSX''), which engaged in NMS stock transactions. The last day of trading on CBSX was April 30, 2014. Therefore, because CBOE no longer operates a facility engaged in NMS stock transactions, CBOE would have no additional NMS stock data to provide nor any reason to avail itself of any further right under the Plan. Accordingly, CBOE proposes to be removed from the Plan.

III. Discussion and Commission Findings

The Commission finds that the amendment is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the amendment is consistent with Section 11A of the Act[6] and Rule 608 thereunder[7] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and that it removes impediments to, and perfects the mechanism of, a national market system.

Pursuant to the Plan, the Participants are required to provide the Commission with certain assessments relating to the impact of the Plan and the calibration of the Percentage Parameters.[8] On September 29, 2014, the Participants submitted a Participant Impact Assessment,[9] which provided the Commission with the Participants' initial observations in each area required to be addressed under Appendix B to the Plan. On May 28, 2015, the Participants submitted a Supplemental Joint Assessment, in which the Participants provided additional analysis required under

[6] 15 U.S.C. 78k–1.

[7] 17 CFR 242.608.

[8] *See* Appendix B.III of the Plan.

[9] *See* Joint SROs letter to Brent J. Fields, Secretary, SEC, dated September 29, 2014 (''Participant Impact Assessment'').

Appendix B and recommended that the Plan be adopted on a permanent basis with certain modifications.[10]

The Participants propose to amend Section VIII(C) of the Plan to extend the pilot period through April 22, 2016, to allow the Participants to conduct, and the Commission to consider, further analysis of data in support of the recommendations made in the Supplemental Joint Assessment. The Participants note that an extension of the pilot period would allow the Participants to finalize and file with the Commission any proposed amendments to the Plan resulting from such recommendations and further analysis.[11]

The Commission believes that it is appropriate in the public interest, for the protection of investors and the maintenance of a fair and orderly market to approve the amendment to extend the pilot period to April 22, 2016 so that the Participants can conduct further analysis to support any recommendations to amend the Plan.[12] In addition, because CBOE no longer operates a facility for NMS Stocks, the Commission believes it is appropriate for CBOE to be removed from the Plan.

For the reasons noted above, the Commission finds that the amendment to the Plan is consistent with Section 11A of the Act[13] and Rule 608 thereunder.[14] The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced, and will propose any modifications to the Plan that may be necessary or appropriate.[15]

[10] *See* Letter from Christopher B. Stone, Vice President, FINRA, to Brent J. Fields, Secretary, SEC, dated May 28, 2015. The Supplemental Joint Assessment is available at *http://www.sec.gov/comments/4-631/4631-39.pdf.*

The areas of analysis in Appendix B are intended to capture the key measures necessary to assess the impact of the Plan and to support recommendations relating to the calibration of the Percentage Parameters to help ensure that the stated objectives of the Plan are achieved—particularly: liquidity when approaching price bands; clearly erroneous trades; the appropriateness of the percentage parameters; the attributes of limit states; the impact of limit states on the options markets; whether process adjustments are needed when entering/exiting a limit state; and the length of trading pauses.

[11] *See* Notice, *supra* note 4 at 56516.

[12] Extending the pilot period will allow the Participants time to consider various substantive issues regarding the operation of the Plan, such as those raised in the IEX Letter, *supra* note 5.

[13] 15 U.S.C. 78k–1.

[14] 17 CFR 242.608.

[15] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[16] and Rule 608 thereunder,[17] that the Ninth Amendment to the Plan (File No. 4–631) be, and it hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27396 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78k–1.

[17] 17 CFR 242.608.

[18] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76237; File No. SR–MIAX–2015–60]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Applicable to Rule 521 and Rule 530 Relating To Limit Up/Limit Down

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend (i) Exchange Rule 530 (Limit Up-Limit Down) to extend the pilot period for the treatment of erroneous transactions during a Limit or Straddle State and (ii) Interpretations and Policies .01 to Rule 521 (Nullification and Adjustment of Options Transactions Including Obvious Errors) to clarify that the pilot period during which an execution will not be subject to review as an Obvious Error or Catastrophic Error will coincide with the pilot period for the LULD Plan (as defined below).

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 530 (Limit Up-Limit Down) in order to extend the pilot period for the treatment of erroneous transactions that occur in a Limit or Straddle State to coincide with the proposed extension of the pilot period for the LULD Plan (as defined below), including any extensions to the pilot period for the LULD Plan.

Exchange Rule 530(j) provides for the treatment of erroneous transactions occurring during Limit and Straddle States. Specifically, once an NMS Stock has entered a Limit or Straddle State, the Exchange will nullify a transaction in an option overlying such an NMS Stock as provided in Rule 530(j). This provision was adopted for a one year pilot period beginning on the date of the implementation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, April 8, 2013 (the ''LULD Plan'').[3] The Exchange previously extended the pilot period for Rule 530(j) until October 23, 2015.[4] The Exchange now proposes to extend the pilot period for Rule 530(j) to coincide with the proposed extension of the pilot period for the LULD Plan, including any extensions to the pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 503(j). *See also* Securities Exchange Act Release Nos. 69210 (March 22, 2013), 78 FR 18637 (March 27, 2013) (SR–MIAX–2013–12); 69342 (April 8, 2013), 78 FR 22017 (April 12, 2013) (SR–MIAX–2013–12); 69234 (March 25, 2013), 78 FR 19344 (March 29, 2013) (SR–MIAX–2013–15); 69354 (April 9, 2013), 78 FR 22357 (April 15, 2013) (SR–MIAX–2013–15).

[4] *See* Securities Exchange Act Release No. 74307 (February 19, 2015), 80 FR 10196 (February 25, 2015) (SR–MIAX–2015–11).

period for the LULD Plan, in order to allow the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rule 530(j) on liquidity and market quality in the options markets.[5]

To assist the Commission in its analysis, the Exchange will provide the Commission and the public with data and analysis during the duration of the pilot in order to evaluate the impact of Limit and Straddle States on liquidity and market quality in the options markets. Specifically, on a date not later than five (5) months prior to the pilot expiration date, including any extensions of the pilot period, the Exchange represents that it shall provide the Commission and the public assessments relating to the impact of the obvious error Rules during Limit and Straddle States that (i) evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (ii) assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic. If the LULD Plan extension is approved the next data assessment will be due no later than December 18, 2015. Additionally, each month during the pilot period the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks. For each stock that reaches a Straddle or Limit State, the number of options included in the dataset can be reduced by selecting options in which at least one (1) trade occurred on the Exchange during the Straddle or Limit State. For each of those options affected, each data record should contain the following information: (i) Stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state; and (ii) for activity on the exchange—(A) executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, (B) high execution price, low execution price, (C) number of trades for which a request for review for error was received during Straddle and Limit States, (D) an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise) and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange also proposes to amend Interpretations and Policies .01 to Rule 521 (Nullification and Adjustment of Options Transactions Including Obvious Errors) to take out the actual end date of the pilot period during which an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of Rule 521 if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the LULD Plan, and instead clarify that the pilot period will coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stock options as a result of extraordinary market volatility. In addition, the Exchange believes that the extension of the pilot to coincide with the pilot period for the LULD Plan will help ensure that market participants continue to benefit from the protections of the Limit Up-Limit Down Rules which will protect investors and the public interest while allowing the Exchange and the Commission additional time to collect and analyze data regarding the impact of Rules on liquidity and market quality in the options markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to extend the pilot program that provides for how the Exchange shall treat orders and quotes in options overlying NMS stocks when the Limit Up-Limit Down Plan is in effect and will not impose any burden on competition while providing certainty of treatment and execution of options orders during periods of extraordinary volatility in the underlying NMS stock, and facilitating appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot

[5] Currently the pilot period for the LULD Plan is proposed to be extended until April 22, 2016. *See* Joint Industry Plan; Notice of Filing of the Ninth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

program to continue uninterrupted while the industry gains further experience operating under the LULD Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2015–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2015–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2015–60, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27356 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76223; File No. SR–CBOE–2015–097]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.25

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.25 (Nullification and Adjustment of Options Transactions including Obvious Errors). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to obvious errors. Interpretation and Policy .01 to Rule 6.25, explained in further detail below, is currently operating on a pilot program set to expire on October 23, 2015. The Exchange proposes to extend the pilot program so that it coincides with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (''Limit Up-Limit Down Plan'' or ''Plan''), including any extensions to the pilot period for the Plan. Currently the Plan Participants have proposed the 9th amendment to the Plan which, if approved, would extend the pilot period of the Plan to April 22, 2016.[3]

On April 5, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.25 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan.[4] Under the terms of this current pilot program, though options executions will generally not be subject to review as an Obvious Error or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (File No. 4–631).

[4] Securities Exchange Act Release No. 69328 (April 5, 2013), 78 FR 21642 (April 11, 2013) (SR–CBOE–2013–030). *See also* Exchange Rule 6.25.01.

Catastrophic Error while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion pursuant to sub-paragraph (c)(3) of Rule 6.25, or a bust or adjust pursuant to paragraphs (e) through (j) and Interpretation .05 of Rule 6.25.[5]

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program.[6] In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission.[7] Pursuant to a rule filing, approved on April 3, 2014, each month, the Exchange committed to provide the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[8] The Exchange will continue to provide the Commission with this data on a monthly basis from October 2015 through the end of the pilot. For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission, and the public, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. The Exchange agrees to provide the analysis and data, to the commission, to help evaluate the impact of the pilot program no later than five months prior to the expiration of the pilot program, including any extensions. If the Plan extension is approved, the next data assessment will be submitted no later than December 18, 2015.

The Exchange is now proposing to extend the pilot period so that it coincides with the pilot period for the Plan, including any extensions to the pilot period for the Plan. The pilot will no longer have a fixed expiration date. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis to coincide with the Plan. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.25 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.25. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Exchange now proposes to extend the pilot program so that it coincides with the pilot period for the Plan, including any extensions to the pilot period for the Plan. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the duration of the pilot to coincide with the pilot period for the Plan, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

[5] *Id.*

[6] See letter from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, date April 4, 2013.

[7] *Id.*

[8] Securities Exchange Act Release No. 71857 (April 3, 2014), 79 FR 19678 (April 9, 2014) (SR–CBOE–2014–033).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2015–097. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–097, and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27343 Filed 10–27–15; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice: 9332; No. 2014–4]

Determination

The Foreign Missions Act (FMA), codified at 22 U.S.C. 4301–4316, authorizes the Secretary of State to approve the terms and conditions on which benefits are provided to foreign missions and to make compliance with those terms and conditions by foreign missions mandatory. 22 U.S.C. 4304(a), (b). Furthermore, the FMA provides that the ''[t]erms and conditions established by the Secretary under this section may include . . . a requirement to pay to the Secretary a surcharge or fee.'' 22 U.S.C. 4304(c)(1). The FMA also authorizes the Secretary to make any provision of the FMA applicable to international organizations (as defined in 22 U.S.C. 4309(b)) when the Secretary determines that such application is necessary to carry out the policy and objectives set forth in the FMA. 22 U.S.C. 4309(a).

Therefore, pursuant to the authority vested in me by the FMA, in particular, 22 U.S.C. 4304(b), and Delegation of Authority No. 198 of September 16, 1992, I hereby determine that it is reasonably necessary to protect the interests of the United States to require foreign missions and international organizations, and, in each case, their staff members (each a ''Beneficiary'' and collectively, ''Beneficiaries'') to pay a surcharge or fee in instances where a Beneficiary creates resource demands on the Office of Foreign Missions (OFM) by: (1) Requesting the replacement of OFM-issued products; (2) failing to comply with the Department's requirements relating to the acquisition or maintenance of liability insurance, license tags, or title and registration documents for motor vehicles, vessels, and aircraft; or (3) otherwise failing to comply with the terms on which the Department has required Beneficiaries to obtain or forego benefits under the FMA.

The authority to regulate the provision of foreign mission benefits under the FMA has been delegated to the Director of OFM (Delegation of Authority No. 214, October 5, 1994).

[15] 17 CFR 200.30–3(a)(12).

Therefore, the rates, terms, and conditions associated with the imposition of surcharges or fees authorized herein may be established or revised at the Director's discretion.

Dated: September 22, 2015.

Patrick F. Kennedy,

Under Secretary for Management.

[FR Doc. 2015–27456 Filed 10–27–15; 8:45 am]

BILLING CODE 4710–43–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, November 16, 2015 at 1:00 p.m. The meeting will be held at the Supreme Court of Louisiana in New Orleans, Louisiana. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2016, and other business. All portions of this meeting are open to the public.

ADDRESSES: Supreme Court of Louisiana, 400 Royal Street, 4th Floor Conference Room, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2015–27424 Filed 10–27–15; 8:45 am]

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STATE JUSTICE INSTITUTE

Grant Guideline, Notice

AGENCY: State Justice Institute.

ACTION: Grant Guideline for FY 2016.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2016 State Justice Institute grants, cooperative agreements, and contracts.

DATES: October 28, 2015.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *jonathan.mattiello@sji.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984 (42 U.S.C. 10701, *et seq.*), SJI is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

The following Grant Guideline is adopted by the State Justice Institute for FY 2016.

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I. The Mission of the State Justice Institute
II. Eligibility for Award
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VIII. Grant Adjustments

I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and,

F. Encourage, assist, and serve in a consulting capacity to state and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705 (b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

SJI is prohibited from awarding grants to federal, tribal, and international courts.

III. Scope of the Program

SJI is offering six types of grants in FY 2015: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiatives Grants (SIG) Program, and the Education Support Program (ESP).

The SJI Board of Directors has established Priority Investment Areas for grant funding. SJI will allocate significant financial resources through grant-making for these Priority Investment Areas (in no ranking order):

- Language Access and the State Courts—improving language access in the state courts through remote interpretation (outside the courtroom), interpreter certification, and courtroom services (plain language forms, Web sites, etc.).
- Self-Represented Litigation—promoting court-based self-help centers, online services, and increasing the use of court-based volunteer attorney programs.
- Reengineering to Improve Court Services—assisting courts with the process of reengineering, regionalization or centralization of services, structural changes, and reducing costs to taxpayers while providing access to justice.
- Remote Technology—supporting the innovative use of technology to improve the business operations of courts and enhance services outside the courtroom. This includes videoconferencing, online access, educational services, and remote court proceedings.
- Human Trafficking and the State Courts—addressing the impact of federal and state human trafficking laws on the state courts, and the challenges faced by state courts in dealing with cases involving trafficking victims and their families.
- Immigration Issues and the State Courts—addressing the impact of federal and state immigration law and policies on the state courts.
- Guardianship, Conservatorship, and Elder Issues—assisting courts in improving and increasing use of court-based volunteer attorney programs.
- Juvenile Justice—innovative projects that have no other existing or potential funding sources (federal, state, or private) that will advance best practices in handling dependency and delinquency cases; promote effective court oversight of juveniles in the justice system; address the impact of trauma on juvenile behavior; assist the courts in identification of appropriate provision of services for juveniles; and address juvenile re-entry.

A. Project Grants

Project Grants are intended to support innovative education and training, research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Examples of expenses not covered by Project Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. Funding from other federal departments or agencies may not be used for cash match. If questions arise, applicants are strongly encouraged to consult SJI.

A temporary reduced cash match process is available for state courts submitting Project Grant applications. The use of this cash match reduction authority is intended to help the state courts in this climate of severe budget reductions. The process requires the state court to formally request a reduced cash match, and that the request be certified by the chief justice of that state. The state court must explain in detail how it is facing budgetary cutbacks that will result in significant reductions in other services, and why it will be unable to undertake the project without a cash match reduction. This must be described in detail in the application and verified by the chief justice of that state. Only state courts may apply for a cash match reduction.

Applicants should examine their projected project costs closely, and if they are unable to cover half the costs of the project, they may apply for a reduction in cash match. Applicants are strongly encouraged to provide as much cash match as possible in their application, as some cash match contribution is still required.

Applicants are also encouraged to provide the percentage of budget reductions in their court(s), and the measures that have been taken by the jurisdiction/state to handle the budget shortfalls. This may include staff reductions, as well as reductions in services and programs. Some cash contribution is still required for Project Grants, and should be reflected in the budget proposal for the project. For example, if the total cost of the proposed project is $100,000, the normal cash match would be $50,000. However, if the applicant is unable to provide $50,000 for the activities, but is able to contribute $25,000, the budget should show the request to SJI totaling $75,000, with the cash match of $25,000.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. Funding will not be made available for the ordinary, routine operations of court systems.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a *total* match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: 1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or

local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or 2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Examples of expenses not covered by CAT Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. Funding from other federal departments and agencies may not be used for cash match. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Partner Grants are initiated and coordinated by the funding organizations. More information on Partner Grants can be found in section IV.D.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and any remaining balance not used for the SIG program will become available for SJI's other grant programs. The program is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (*i.e.,* SJI will initiate the project).

F. Education Support Program (ESP) for Judges and Court Managers

The Education Support Program (ESP) is intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. An ESP award only covers the cost of tuition up to a maximum of $1,000 per award. ESP application procedures can be found in section IV.E.

IV. Grant Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (see below). See *www.sji.gov/forms* for Project Grant application forms.

1. Forms

a. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (see subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities (Form E)

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (see section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives.

The applicant must describe how the proposed project addresses one or more

Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

b. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

c. Tasks, Methods and Evaluations

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) *Evaluation.* Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should be appropriate to the type of project proposed.

d. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

e. Products

The program narrative in the application should contain a description of the product(s) to be developed (*e.g.,* training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the Web site or electronic product (*i.e.,* a

written report with a reference to the Web site).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) *Types of Products.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (see section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) *SJI Review.* Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI (see section VI.A.11.f.).

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's Web site: *www.sji.gov.*

f. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (see section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

g. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

h. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

i. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form E, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

j. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. Letters of general support for a project are also encouraged.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of

state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

i. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

j. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, *i.e.* salaries plus fringe benefits (see section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI Web site. Receipt of each application will be acknowledged by letter or email.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and three copies of a detailed letter describing the proposed project, as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval from the State Supreme Court, or its designated agency; and Form C—Project Budget in Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* The applicant must explain the critical need facing the applicant, and the proposed technical assistance that will enable the applicant meet this critical need. The applicant must also explain why state or local resources are not sufficient to fully support the costs of the project. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the

NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

b. *Project Description.* The applicant must describe how the proposed project addressed one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The applicant must describe the tasks the consultant will perform, and how would they be accomplished. In addition, the applicant must identify which organization or individual will be hired to provide the assistance, and how the consultant was selected. If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A.4. A completed Form C—Project Budget, Tabular Format and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.,* the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI Web site.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Letters of general support for the project are also encouraged. Support letters may be submitted under separate cover; however, they should be received by the same date as the application.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A—State Justice Institute Application; Form B—Certificate of State Approval; and Form C—Project Budget, Tabular Format (see *www.sji.gov/forms*).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) *Project Description.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not. Due to the high costs of travel to attend training events, the innovative use of distance learning is highly encouraged.

The applicant must provide the title of the curriculum that will be adapted, and identify the entity that originally developed the curriculum. The applicant must also address the following questions: Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) *Need for Funding.* The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should explain why state or local resources are unable to fully support the modification and presentation of the model curriculum. The applicant should also describe the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(3) *Likelihood of Implementation.* The applicant should provide the proposed

timeline, including the project start and end dates, the date(s) the judicial branch education program will be presented, and the process that will be used to modify and present the program. The applicant should also identify who will serve as faculty, and how they were selected, in addition to the measures taken to facilitate subsequent presentations of the program. Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) *Need for Funding.* The applicant must describe how the proposed project addresses one or more Priority Investment Areas. If the project does not address one or more Priority Investment Areas, the applicant must provide an explanation why not.

The discussion should include specific references to the relevant literature and to the experience in the field. SJI continues to make all grant reports and most grant products available online through the National Center for State Courts (NCSC) Library and Digital Archive. Applicants are required to conduct a search of the NCSC Library and Digital Archive on the topic areas they are addressing. This search should include SJI-funded grants, and previous projects not supported by SJI. Searches for SJI grant reports and other state court resources begin with the NCSC Library section. Applicants must discuss the results of their research; how they plan to incorporate the previous work into their proposed project; and if the project will differentiate from prior work.

The applicant should describe the court reform or initiative prompting the need for training. The applicant should also discuss how the proposed training will help the applicant implement planned changes at the court, and why state or local resources are not sufficient to fully support the costs of the required training. In addition, the applicant should describe how, if applicable, the project will be sustained in the future through existing resources.

(2) *Project Description.* The applicant must identify the tasks the trainer(s) will be expected to perform, which organization or individual will be hired, and, if in-house personnel are not the trainers, how the trainer will be selected. If a trainer has not yet been identified, the applicant must describe the procedures and criteria that will be used to select the trainer. In addition, the applicant should address the following questions: What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) *Likelihood of Implementation.* The applicant should explain what steps have been or will be taken to coordinate the implementation of the training. For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the reform and initiate the training proposed, how will the applicant secure their involvement in the development and implementation of the training?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A.4. Applicants should attach a copy of budget Form C and a budget narrative (see subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Letters of support for the project are also encouraged. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant.

E. Education Support Program (ESP)

1. Limitations

Applicants may not receive more than one ESP award in a two-year fiscal year period unless the course specifically assumes multi-year participation, such as a certification program or a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of the SJI Board of Directors to approve serial ESP awards). If the course assumes multi-year participation, awards will be limited to one per fiscal year. Attendance at annual or mid-year meetings or conferences of a state or national organization does not qualify as an out-of-state educational program for the ESP, even though it may include workshops or other training sessions.

The ESP only covers the cost of tuition up to a maximum of $1,000 per award, per course. Awards will be made for the exact amount requested for tuition. Funds to pay tuition in excess of $1,000, and other cost of attending the program such as travel, lodging, meals, materials, transportation to and from airports (including rental cars) must be obtained from other sources or borne by the ESP award recipient. Applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible. An ESP award is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by SJI.

2. Eligibility Requirements

a. *Recipients.* Because of the limited amount of funding available, only full-time judges of state or local trial and appellate courts; full-time professional, state, or local court personnel with management and supervisory responsibilities; and supervisory and management probation personnel in judicial branch probation offices are eligible for the program. Senior judges,

part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible.

b. *Courses.* An ESP award is only for: (1) A course presented in a state other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers.

Applicants are encouraged not to wait for the decision on an ESP application to register for an educational program they wish to attend. SJI does not submit the names of ESP award recipients to educational organizations, nor provide the funds to the educational organization. ESP funds are provided as reimbursements directly to the recipient.

3. Forms

a. *Education Support Program Application—Form ESP–1* (see *www.sji.gov/forms*). The application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with state and local court colleagues. The application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. SJI will not supplant state funds with these awards.

b. *Education Support Program Concurrence—Form ESP–2* Judges and court managers applying for the program must submit the original written concurrence of the chief justice of the state's supreme court (or the chief justice's designee) on Form ESP–2. The signature of the presiding judge of the applicant's court may not be substituted for that of the state's chief justice or the chief justice's designee. The chief justice or state court administrator must notify SJI of the designees within the state for ESP purposes.

4. Submission Requirements

Applications may be submitted at any time but will be reviewed on a quarterly basis. This means ESP awards will be on a ''first-come, first-considered'' basis. The dates for applications to be received by SJI for consideration in FY 2015 are November 1, February 1, May 1, and August 1. These are *not* mailing deadlines. The applications must be received by SJI on or before each of these dates. No exceptions or extensions will be granted. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item sent will be used in determining the review date. All applications should be sent by mail or courier (not fax or email).

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and,

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (see section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the federal courts or help state courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and,

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and,

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget.

SJI will also consider factors such as the reasonableness of the amount requested; compliance with match requirements; diversity of subject matter, geographic diversity; the level of appropriations available to SJI in the current year; and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

5. Education Support Program (ESP)

ESP awards are only for programs that either: (1) Enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel. Awards are provided on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent (''first-come, first-considered'');

b. The unavailability of state or local funds, or funding from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's state addressing the topic(s) covered by the educational program for which the award is being sought;

d. Geographic balance among the recipients;

e. The balance of ESP awards among educational providers and programs;

f. The balance of ESP awards among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. The level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

The Board will review the applications competitively. The Board will review all applications and decide which projects to fund. The decision to fund a project is solely that of the Board of Directors. The Chairman of the Board will sign approved awards on behalf of SJI.

3. Education Support Program (ESP)

A committee of the Board of Directors will review ESP applications quarterly. The committee will review the applications competitively. The Chairman of the Board will sign approved awards on behalf of SJI.

4. Partner Grants

SJI's internal process for the review and approval of Partner Grants will depend on negotiations with fellow financiers. SJI may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that SJI records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except ESP applications), if requested, SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for ESP awards, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in other situations.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (see section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). ESP award recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (see section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs

must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought. SJI will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than ESP award recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (see section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (see section V.B.1.b.).

Other federal department and agency funding may not be used for cash match.

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on SJI's Web site: *www.sji.gov/forms.*

(2) Recipients also must display the following disclaimer on all grant products: ''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not

necessarily represent the official position or policies of the State Justice Institute.''

(3) In addition to other required grant products and reports, recipients must provide a one page executive summary of the project. The summary should include a background on the project, the tasks undertaken, and the outcome. In addition, the summary should provide the performance metrics that were used during the project, and how performance will be measured in the future.

b. Charges for Grant-Related Products/ Recovery of Costs

(1) SJI's mission is to support improvements in the quality of justice and foster innovative, efficient solutions to common issues faced by all courts. SJI has recognized and established procedures for supporting research and development of grant products (*e.g.* a report, curriculum, video, software, database, or Web site) through competitive grant awards based on merit review of proposed projects. To ensure that all grants benefit the entire court community, projects SJI considers worthy of support (in whole or in part), are required to be disseminated widely and available for public consumption. This includes open-source software and interfaces. Costs for development, production, and dissemination are allowable as direct costs to SJI.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain SJI's prior written approval of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (see section VII.G.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (see section VII.L.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. SJI Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of Web site or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than ESP awards must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis backup files containing research and evaluation data collected under an SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained.

Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). See section VII.C.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the SJI-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Education Support Program (ESP) Recipients

1. ESP award recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the state

Recipients also must submit to SJI a certificate of attendance from the program and a copy of the notice of any funding received from other sources. A state or local jurisdiction may impose additional requirements on ESP award recipients.

2. To receive the funds authorized by an ESP award, recipients must submit an ESP Payment Request (Form ESP–3) together with a paid tuition statement from the program sponsor.

ESP Payment Requests must be submitted within 90 days after the end of the course, which the recipient attended.

3. ESP recipients are encouraged to check with their tax advisors to determine whether an award constitutes taxable income under federal and state law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Grant Guideline, the following circulars are applicable to SJI grants and cooperative agreements under the same terms and conditions that apply to federal grantees. The circulars supplement the requirements of this section for accounting systems and financial record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at *www.whitehouse.gov/omb*).

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
4. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
5. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–133,* Audits of States, Local Governments and Non-profit Organizations.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the books of the state supreme court or evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) *Accounting for Match.* The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (see section VI.A.8.).

(5) *Audit Requirement.* The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (see sections K. below and VI.A.3.).

(6) *Reporting Irregularities.* The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a ''Total Project Cost'' basis. That is, total project costs, including SJI funds, state and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time as the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (see subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to an SJI grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval of SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports (Form F) and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

a. *Request for Reimbursement of Funds.* Grantees will receive funds on a U.S. Treasury ''check-issued'' or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Reimbursement (Form R) by SJI, payment will be issued directly to the grantee or its designated fiscal agent. The Form R, along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: *www.sji.gov/forms.*

b. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/sub-grantees submit timely reports for review.

b. *Due Dates and Contents.* A Financial Status Report is required from all grantees, other than ESP award recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report (Form F), along with instructions, are provided at *www.sji.gov/forms.* If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant,

cost allowability is determined in accordance with the principles set forth in *OMB Circulars A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of SJI is required for costs considered necessary but which occur prior to the start date of the project period.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of SJI is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of SJI is required when the rate of compensation to be paid a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (see section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

4. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available

(1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.,* accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

J. Procurement and Property Management Standards

1. Procurement Standards

For state and local governments, SJI has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all SJI grantees and sub-grantees except as provided in section VI.A.18. All grantees/sub-grantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a federal agency and satisfy audit requirements of that federal agency must submit two copies of the audit report prepared for that federal agency to SJI in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see subsection L.2. below), the following documents must be submitted to SJI by grantees (other than ESP award recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is

determined that the funds are not required. In no instance should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation. These reporting requirements apply at the conclusion of every grant other than an ESP award.

2. Extension of Close-Out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).

2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see subsection E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see subsections F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section VI.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see subsection H. below).

11. A transfer of the grant to another recipient.

12. Pre-agreement costs (see section VII.I.2.a.).

13. The purchase of automated data processing equipment and software (see section VII.I.2.b.).

14. Consultant rates (see section VII.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by SJI.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be

performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

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Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2015–27443 Filed 10–27–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Specific Release Form

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information garnered from a Specific Release form will be used by FAA Special Agents to obtain information related to a specific investigation. That information is then provided to the FAA decision making authority to make FAA employment and/or pilot certification/revocation determinations.

DATES: Written comments should be submitted by December 28, 2015.

ADDRESSES: Send comments to the FAA at the following address: Ronda Thompson, Room 300, Federal Aviation Administration, ASP–110, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0740.

Title: Specific Release Form.

Form Numbers: FAA Form 1600–81.

Type of Review: Renewal of an information collection.

Background Investigations are conducted under 49 U.S.C. Sections 106, 40113, 40114, 46101, and 46104, the Aviation Drug Trafficking Control Act of 1984, the Anti-Drug Abuse Act of 1986, and the Anti-Drug Abuse Act of 1988. The public respondents are pilots or FAA job applicants from whom additional information is needed to complete a thorough investigation. The information garnered from a signed Specific Release form is used by FAA Special Agents to obtain information related to a specific investigation.

Respondents: Approximately 270 subjects of investigation.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 23 hours.

Issued in Washington, DC, on October 21, 2015.

Ronda Thompson,

FAA Information Collection Clearance Officer Policy, Performance and Records Management Branch, ASP–110.

[FR Doc. 2015–27462 Filed 10–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 557 (Sub-No. 1X)]

Trustees of the Cincinnati Southern Railway Company—Abandonment Exemption, Scott County, TN

The Trustees of the Cincinnati Southern Railway Co. (CSR) have filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 3.09 miles of rail line extending from milepost NR 215.61 near Helenwood to milepost NR 218.7 at New River in Scott County, Tenn. (the Line).[1] The Line traverses United States Postal Service Zip Code 37755.

CSR has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 27, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental

[1] In its verified notice of exemption, CSR states that it holds legal title to the Line for the benefit of the City of Cincinnati. According to CSR, CSR has agreed to sell its interest in the right-of-way over the Line to KT Group following consummation of the abandonment. CSR notes that KT Group intends to salvage the Line.

issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 9, 2015. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 17, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSR has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 2, 2015. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by filing of a notice of consummation by October 28, 2016, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2015–27422 Filed 10–27–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board Notice of Meetings—December 2015 and January 2016

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will meet from 8:00 a.m. to 5:00 p.m. on the dates indicated below (unless otherwise listed):

Subcommittee	Date	Location
Epidemiology	December 2, 2015	* VA Central Office.
Immunology-A	December 2, 2015	Hilton Garden Inn—DC/US Capitol.
Neurobiology-C	December 2, 2015	American College of Surgeons.
Oncology-A	December 2, 2015	* VA Central Office.
Mental Health and Behavioral Sciences-A	December 3, 2015	Corporation for Enterprise Development.
Cardiovascular Studies-A	December 3, 2015	Hilton Garden Inn—DC/US Capitol.
Endocrinology-B	December 3, 2015	VA Central Office.
Pulmonary Medicine	December 3, 2015	National Postal Museum, Blount Center.
Oncology-B	December 3, 2015	* VA Central Office.
Clinical Trials-A	December 4, 2015	Corporation for Enterprise. Development.
Neurobiology-A	December 4, 2015	VA Central Office.
Neurobiology-E	December 4, 2015	US Access Board.
Oncology-D	December 4, 2015	* VA Central Office.
Oncology-C	December 4, 2015	* VA Central Office.
Special Emphasis on Genomics	December 4, 2015	* VA Central Office.
Aging and Clinical Geriatrics	December 7, 2015	* VA Central Office.
Endocrinology-A	December 7, 2015	US Access Board.
Neurobiology-R	December 7, 2015	* VA Central Office.
Oncology-E	December 7, 2015	* VA Central Office.
Clinical Trials-B	December 8, 2015	* VA Central Office.
Neurobiology-B	December 8, 2015	US Access Board.
Neurobiology-F	December 9, 2015	* VA Central Office.
Cardiovascular Studies-B	December 10, 2015	Corporation for Enterprise Development.
Gastroenterology	December 10, 2015	American College of Surgeons .
Special Emphasis on Million Veteran Program Projects	December 10, 2015	VA Central Office.
Neurobiology-D	December 11, 2015	Corporation for Enterprise Development.
Gulf War Research	December 11, 2015	* VA Central Office.
Eligibility	January 15, 2015	Corporation for Enterprise Development.
JBL/CS SMRB	January 28, 2016	* VA Central Office (3:00 p.m. ET).

The addresses of the meeting sites are:
American College of Surgeons, 20 F Street NW., Washington, DC;
Corporation for Enterprise Development, 1200 G Street NW., Suite 400, Washington, DC;
Hilton Garden Inn Washington, DC/US Capitol, 1225 First Street NE., Washington, DC;
US Access Board, 1331 F Street NW., Suite 1000, Washington, DC;
National Postal Museum, Blount Center, 2 Massachusetts Avenue NE., Washington, DC;
VA Central Office, 1100 First Street NE., Suite 600, Washington, DC.
* Teleconference.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

The purpose of the subcommittees is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review evaluation. Proposals submitted for review include diverse medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals. However, the JBL/CS SMRB teleconference meeting will be open to the public. Members of the public who wish to attend the open JBL/CS SMRB teleconference may dial 1–800–767–1750, participant code 95562. Members of the public who wish to make a statement at the JBL/CS SMRB meeting must notify Dr. Alex Chiu via email at *alex.chiu@va.gov* by January 21, 2016.

The closed subcommittee meetings involve discussion, examination, and reference to staff and consultant critiques of research proposals. Discussions will deal with scientific merit of each proposal and qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of research information could significantly frustrate implementation of proposed agency action regarding the research proposals. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing the subcommittee meetings is in accordance with Title 5 U.S.C. 552b(c) (6) and (9)(B).

Those who would like to obtain a copy of the minutes from the closed subcommittee meetings and rosters of the subcommittee members should contact Alex Chiu, Ph.D., Manager, Merit Review Program (10P9B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5672 or email at *alex.chiu@va.gov.*

Dated: October 22, 2015.

Rebecca Schiller,

Advisory Committee Management Officer.

[FR Doc. 2015–27337 Filed 10–27–15; 08:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Advisory Committee on Cemeteries and Memorials.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), National Cemetery Administration (NCA), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on Cemeteries and Memorials (herein-after in this section referred to as ''the Committee''). The Committee was established pursuant to 38 U.S.C. 2401 to advise the Secretary of VA with respect to the administration of VA national cemeteries, soldiers' lots and plots, which are the responsibility of the Secretary, the erection of appropriate memorials and the adequacy of Federal burial benefits. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on November 30, 2015.

ADDRESSES: All nominations should be mailed to National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW. (43A2), Washington, DC 20420, or faxed to (202) 632–7910.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Nacincik, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Ave. NW. (43A2), Washington, DC 20420, telephone (202) 632–8013. A copy of Committee charter and list of the current membership can be obtained by contacting Mr. Nacincik or by accessing the Web site managed by NCA at: *http://www.cem.va.gov/cem/about/advisory_committee.asp*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Cemeteries and Memorials (ACCM) was established pursuant to 38 U.S.C. 2401 to advise the Secretary of VA with respect to the administration of VA national cemeteries, soldiers' lots and plots, which are the responsibility of the Secretary, the erection of appropriate memorials and the adequacy of Federal burial benefits. The Committee responsibilities include:

(1) Advising the Secretary on VA's administration of burial benefits and the selection of cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits;

(2) Providing to the Secretary and Congress periodic reports outlining recommendations, concerns, and observations on VA's delivery of these benefits and services to Veterans;

(3) Meeting with VA officials, Veteran Service Organizations, and other stakeholders to assess the Department's efforts in providing burial benefits and outreach on these benefits to Veterans and their dependents;

(4) Undertaking assignments to conduct research and assess existing burial and memorial programs; to examine potential revisions or expansion of burial and memorial programs and services; and to provide advice and recommendations to the Secretary based on this research.

NCA is requesting nominations for upcoming vacancies on the Committee. The Committee is currently composed of nine members, in addition to ex-officio members.

The members of the Committee are appointed by the Secretary of Veteran Affairs from the general public, including but not limited to:

(1) Veterans or other individuals who are recognized authorities in fields pertinent to the needs of Veterans;

(2) Veterans who have experience in a military theater of operations;

(3) Recently separated veterans; and

(4) Officials from Government, non-Government organizations (NGOs) and industry partners in the provision of memorial benefits and services, and outreach information to VA beneficiaries.

The Secretary shall determine the number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that a term of service of any such member may not exceed four years. The Secretary may reappoint any such member for additional terms of service.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications, including but not limited to prior military experience and military deployments, experience working with Veterans and in large and complex organizations, and subject matter expertise in the subject areas described above. We ask that nominations include information of this type so that VA can ensure a balanced Committee membership.

Requirements for Nomination Submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee

indicating the willingness to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's curriculum vitae; and

(4) A summary of the nominee's experience and qualifications relative to the membership considerations described above.

Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of VA federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identify, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: October 23, 2015.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2015–27433 Filed 10–27–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2014–0019]

RIN 3170–AA10

Home Mortgage Disclosure (Regulation C)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection is amending Regulation C to implement amendments to the Home Mortgage Disclosure Act made by section 1094 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Consistent with section 1094 of the Dodd-Frank Act, the Bureau is adding several new reporting requirements and clarifying several existing requirements. The Bureau is also modifying the institutional and transactional coverage of Regulation C. The final rule also provides extensive guidance regarding compliance with both the existing and new requirements.

DATES: This rule is effective on January 1, 2018, except that the amendment to § 1003.2 in amendatory instruction 3 is effective on January 1, 2017; the amendments to § 1003.5 in amendatory instruction 8, the amendments to § 1003.6 in amendatory instruction 10, the amendments to appendix A to part 1003 in amendatory instruction 12, and the amendments to supplement I to part 1003 in amendatory instruction 16 are effective on January 1, 2019; and the amendments to § 1003.5 in amendatory instruction 9 are effective on January 1, 2020. See part VI for more information.

FOR FURTHER INFORMATION CONTACT: Jaydee DiGiovanni, David Jacobs, Terry J. Randall, or James Wylie, Counsels; or Elena Grigera Babinecz, Courtney Jean, Joan Kayagil, Thomas J. Kearney, or Laura Stack, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

Regulation C implements the Home Mortgage Disclosure Act (HMDA), which was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). On July 24, 2014, the Bureau issued a proposed rule to amend Regulation C, which was published in the **Federal Register** on August 29, 2014 (the 2014 HMDA Proposal or the proposal).[1] The Bureau is publishing final amendments to Regulation C modifying the types of institutions and transactions subject to the regulation, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.

A. Modifications to Institutional and Transactional Coverage

The Bureau is modifying Regulation C's institutional and transactional coverage to better achieve HMDA's purposes in light of current market conditions and to reduce unnecessary burden on financial institutions. The Bureau is adopting uniform loan-volume thresholds for depository and nondepository institutions. The loan-volume thresholds require an institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, provided that the institution meets all of the other criteria for institutional coverage. The final rule also includes a separate test to ensure that covered institutions that meet only the 25 closed-end mortgage loan threshold are not required to report their open-end lending, and that covered institutions that meet only the 100 open-end line of credit threshold are not required to report their closed-end lending.

In addition, the final rule retains the current institutional coverage criteria for depository institutions, which require reporting by depository institutions that satisfy an asset-size threshold, have a branch or home office in an Metropolitan Statistical Area (MSA) on the preceding December 31, satisfy the current federally related test, and originated at least one first-lien home purchase loan or refinancing secured by a one- to four-unit dwelling in the previous calendar year. For nondepository institutions, the final rule replaces the current loan-volume or -amount test with the loan-volume thresholds discussed above, and removes the current asset-size or loan-volume threshold, but retains the current criterion that the institution have a branch or home office in an MSA on the preceding December 31.

The Bureau also is modifying the types of transactions subject to Regulation C. The final rule adopts a dwelling-secured standard for all loans or lines of credit that are for personal, family, or household purposes. Thus, most consumer-purpose transactions, including closed-end home-equity loans, home-equity lines of credit, and reverse mortgages, are subject to the regulation. Most commercial-purpose transactions (*i.e.,* loans or lines of credit not for personal, family, or household purposes) are subject to the regulation only if they are for the purpose of home purchase, home improvement, or refinancing. The final rule excludes from coverage home improvement loans that are not secured by a dwelling (*i.e.,* home improvement loans that are unsecured or that are secured by some other type of collateral) and all agricultural-purpose loans and lines of credit.

B. Modifications to Reportable Data Requirements

The final rule amends several of Regulation C's currently required data points to clarify the requirements and make the data more useful. To streamline the regulation, the final rule removes appendix A; all of the substantive requirements contained in appendix A have been moved, with some modifications, to the regulation text or commentary. The final rule also adopts several new data points, many of which were added by the Dodd-Frank Act, and some of which were added pursuant to the Bureau's discretionary authority to carry out the purposes of HMDA. The final rule does not adopt some of the new or amended data points set forth in the 2014 HMDA Proposal, such as the proposed requirements to report qualified mortgage status or the initial draw on an open-end line of credit. The data points required to be reported under the final rule can be grouped into four broad categories:

- Information about applicants, borrowers, and the underwriting process, such as age, credit score, debt-to-income ratio, and automated underwriting system results.
- Information about the property securing the loan, such as construction method, property value, and additional information about manufactured and multifamily housing.
- Information about the features of the loan, such as additional pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and the type of loan.
- Certain unique identifiers, such as a universal loan identifier, property address, loan originator identifier, and a

[1] 79 FR 51731 (Aug. 29, 2014). *See also* Press Release, U.S. Bureau of Consumer Fin. Prot., *CFPB Proposes Rule to Improve Information About Access to Credit in the Mortgage Market* (July 24, 2014), *available at http://www.consumerfinance.gov/newsroom/cfpb-proposes-rule-to-improve-information-about-access-to-credit-in-the-mortgage-market/.*

legal entity identifier for the financial institution.[2]

The final rule also amends the current requirements related to the collection of ethnicity, race, and sex of applicants and borrowers. The final rule requires financial institutions to report whether ethnicity, race, or sex information was collected on the basis of visual observation or surname when an application is taken in person and the applicant does not provide the information. For transactions where ethnicity and race information is provided by the applicant or borrower, the final rule requires financial institutions to permit applicants and borrowers to self-identify using disaggregated ethnic and racial categories. However, when race and ethnicity data is completed by the financial institution, the final rule retains the current requirements, requiring financial institutions to provide only aggregated ethnic or racial data.

C. Modifications to Disclosure and Reporting Requirements

The final rule retains the current requirement that financial institutions submit their HMDA data to the appropriate Federal agency by March 1 following the calendar year for which the data are collected. The final rule imposes a new requirement that financial institutions that report large volumes of HMDA data for a calendar year also submit their data for the first three quarters of the following calendar year to the appropriate Federal agency on a quarterly basis. However, the final rule removes the current requirements that a financial institution provide to the public its disclosure statement and its loan/application register, modified to protect applicant and borrower privacy, and instead requires financial institutions to provide a notice to members of the public seeking these data that the information is available on the Bureau's Web site.

II. Background

A. HMDA and Regulation C

For nearly 40 years, HMDA has provided the public with information about mortgage lending activity within communities throughout the nation. Public officials use the information available through HMDA to develop and allocate housing and community development investments, to respond to market failures when necessary, and to monitor whether financial institutions may be engaging in discriminatory lending practices. The data are used by the mortgage industry to inform business practices, and by local communities to ensure that lenders are serving the needs of individual neighborhoods. To maintain the data's usefulness, HMDA and Regulation C have been updated and expanded over time in response to the changing needs of homeowners and evolution in the mortgage market. This part II.A provides an abbreviated discussion of the detailed background information presented in the proposal, which the Bureau considered and relied on in preparing this final rule.[3]

The Statute and Current Regulation

The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.,* requires certain depository institutions and for-profit nondepository institutions to collect, report, and disclose 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). As originally adopted, HMDA identifies its purposes as providing the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located, and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.[4] Congress later expanded HMDA to, among other things, require financial institutions to report racial characteristics, gender, and income information on applicants and borrowers.[5] In light of these amendments, the Board of Governors of the Federal Reserve System (Board) subsequently recognized a third HMDA purpose of identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, which now appears with HMDA's other purposes in Regulation C.[6]

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and also transferred HMDA rulemaking authority and other functions from the Board to the Bureau.[7] Among other changes, the Dodd-Frank Act expands the scope of information relating to mortgage applications and loans that must be compiled, maintained, and reported under HMDA. New data points include the age of loan applicants and mortgagors, information relating to the points and fees payable at origination, the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans, 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 for the loan, the presence of contract terms allowing non-amortizing payments, the origination channel, and the credit scores of applicants and mortgagors.[8] The Dodd-Frank Act also authorizes the Bureau to require, ''as [it] may determine to be appropriate,'' a unique identifier that identifies the loan originator, a universal loan identifier, and the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral for the mortgage loan.[9] The Dodd-Frank Act also provides the Bureau with the authority to require ''such other information as the Bureau may require.''[10]

The Bureau's Regulation C, 12 CFR part 1003, implements HMDA. Regulation C currently requires depository institutions (*i.e.,* banks, savings associations, and credit unions) and for-profit nondepository mortgage lending institutions to submit and publicly disclose certain HMDA data if they meet criteria set forth in the rule. Whether a depository institution is required to report and publicly disclose data depends on its asset size, the location of its home and branch offices, the extent to which it engages in residential mortgage lending, and the extent to which the institution or its loans are federally related. Whether a for-profit nondepository mortgage lending institution is required to report and publicly disclose data depends on its size, the location of its home and branch offices, including the extent of its business in MSAs, and the extent to which it engages in residential mortgage lending.

Covered financial institutions are required to report originations and purchases of mortgage loans (home purchase and refinancing) and home improvement loans, as well as loan

[2] All of the data points required by the final rule are discussed in detail below in the section-by-section analysis of § 1003.4(a).

[3] *See* 79 FR 51731, 51734–39 (Aug. 29, 2014).

[4] HMDA section 302(b), 12 U.S.C. 2801(b); *see also* 12 CFR 1003.1(b)(1)(i)–(ii).

[5] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101–73, section 1211 (''Fair lending oversight and enforcement'' section), 103 Stat. 183, 524–26 (1989).

[6] 54 FR 51356, 51357 (Dec. 15, 1989), *codified at* 12 CFR 1003.1(b)(1).

[7] Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010). Also, in 2010, the Board conducted public hearings on potential revisions to Regulation C. The Board's hearings are discussed below.

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

[9] *Id.*

[10] *Id.*

applications that do not result in originations. The information reported under Regulation C currently includes, among other items: application date; loan or application type, purpose, and amount; property location and type; race, ethnicity, sex, and annual income of the loan applicant; action taken on the loan application (approved, denied, withdrawn, etc.), and date of that action; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); lien status (first lien, subordinate lien, or unsecured); and certain loan price information.

Depository financial institutions report HMDA data to their supervisory agencies, while nondepository financial institutions report HMDA data to the U.S. Department of Housing and Urban Development (HUD). Financial institutions report their data on an application-by-application basis using a register format referred to as the loan/application register. Institutions must make their loan/application registers available to the public, with certain fields redacted to preserve applicants' and borrowers' privacy. At present, the Federal Financial Institutions Examination Council (FFIEC),[11] on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution and aggregate reports for all covered institutions in each metropolitan area. These disclosure statements and reports are available to the public. On behalf of the agencies, the FFIEC also annually releases a loan-level dataset containing all reported HMDA data for the preceding calendar year with certain fields redacted to protect the privacy of applicants and borrowers.

Overview of HMDA's Purposes and Evolution

In the decades that followed World War II, the standard of living declined sharply in many U.S. cities as people migrated to the suburbs. A significant cause of this decline was the gradual deterioration of the urban housing supply. Although Congress took several steps to address this problem, by the 1970s it was clear that inadequate private investment and a lack of access to credit was contributing to an ongoing cycle of decline in urban neighborhoods. However, Congress lacked adequate data to determine the extent and severity of these market failures. To create transparency in the mortgage market Congress enacted HMDA in 1975, which the Board implemented by promulgating Regulation C in 1976. As originally enacted, HMDA applied to certain depository institutions that were located in standard metropolitan statistical areas, and required the disclosure of a limited amount of data regarding home improvement and residential mortgage loans.[12]

HMDA substantially improved the public's ability to determine whether financial institutions were serving the needs of their communities, but during the 1980s several events occurred that illustrated the need to improve and expand the HMDA data. A series of investigative reports and studies revealed that discrimination against certain applicants and borrowers was common during the mortgage lending process. Concerns over this discrimination, coupled with the need to respond to the savings and loan crisis of the late 1980s, led Congress to amend HMDA significantly in 1988 and 1989. These amendments, among other things, expanded the coverage of depository and nondepository institutions, required transaction-level disclosure of applications and loans, and added new reporting requirements regarding the applicant's or borrower's race, gender, and income. These amendments dramatically improved the public's understanding of how mortgage lending decisions affected both communities and individual applicants and borrowers.[13]

The mortgage market evolved and became more complex during the 1990s, particularly with respect to the expansion of the secondary market and the growth of the subprime market. Faced with concerns about potential predatory and discriminatory practices in the subprime market, community groups and others began to call for new amendments to HMDA to provide increased visibility into market practices. The Board addressed some of these concerns by amending Regulation C in 2002. However, as delinquencies, foreclosures, and other harmful effects of subprime lending unfolded, it became apparent that communities throughout the nation lacked sufficient information to understand the magnitude of the risk to which they were exposed. Community groups, local, State, and Federal officials relied on the HMDA data to identify at-risk neighborhoods and to develop foreclosure relief and homeownership stabilization programs. However, the limited data provided presented several challenges for those who attempted to create effective and responsive relief programs. As discussed above, Congress added several new reporting requirements, but left the Bureau to determine which additional information is necessary. Many argue that more publicly available information is needed to help inform communities of lending practices that affect local economies and may endanger neighborhood stability. The Bureau believes that the HMDA data must be updated to address the informational shortcomings exposed by the financial crisis and to meet the needs of homeowners, potential homeowners, and neighborhoods throughout the nation.[14]

B. Applicant and Borrower Privacy

In its proposal, the Bureau set forth the approach it proposed to take to protect applicant and borrower privacy in light of HMDA's purposes. It proposed the use of a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling the disclosure purposes of the statute.[15] For the reasons described below, the Bureau is adopting the balancing test described in the proposal. The Bureau will provide at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. Today, HMDA data are the primary source of information for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for HMDA's purposes and for general market monitoring. Developing appropriate protections for applicant and borrower

[11] The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the Federal examination of financial institutions by the Bureau, the Board, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee was added to the Council as a voting member.

[12] *See* 79 FR 51731, 51735–36 (Aug. 29, 2014).

[13] *See* 79 FR 51731, 51736–37 (Aug. 29, 2014).

[14] *See* 79 FR 51731, 51737–39 (Aug. 29, 2014).

[15] 79 FR 51731, 51742 (Aug. 29, 2014).

privacy in light of HMDA's purposes is a significant priority for the Bureau. The Bureau is mindful that privacy concerns may arise both when financial institutions compile and report HMDA data to their regulators and when the data are disclosed to the public.

Compiling and Reporting of HMDA Data

Financial institutions collect various types of information from consumers in the course of processing loan applications. To promote HMDA's goals, HMDA and Regulation C require financial institutions to compile and report to regulators some of this information and other information obtained or generated concerning the application or loan. As discussed above, the Dodd-Frank Act both expanded the scope of information that financial institutions must compile and report and authorized the Bureau to require financial institutions to compile and report additional data. The Bureau carefully considered the potential risks to applicant and borrower privacy associated with compiling and reporting data in developing the proposal and adopting this final rule.

Neither consumer advocate commenters nor the privacy advocate that submitted a comment identified concerns about applicant and borrower privacy associated with the compilation and reporting of data to regulators under the proposal. However, the Bureau received many comments from industry arguing that the compilation and reporting of certain data under the proposal created significant and unjustified risks to applicant and borrower privacy. These comments focused on concerns relating to the potential identifiability and sensitivity of the data to be compiled and reported. Most commenters expressed concerns about potential harms to applicants and borrowers if the data compiled and reported under the proposal were subject to unauthorized access. A few commenters also expressed concerns about potential legal liability and costs to financial institutions associated with the compilation and reporting of the proposed data.

Many industry commenters argued that the proposed requirement to report the postal address of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan [16] would allow data users to easily link all reported data to an individual applicant or borrower. Some commenters also suggested that proposed data fields other than postal address could allow individual applicants and borrowers to be identified in the reported HMDA data. Many industry commenters asserted that some of the proposed data fields, if tied to an individual, would reveal sensitive information about the applicant or borrower.[17]

Some industry commenters expressed general concern about government collection of information that may be linkable to individuals, but most commenters expressed specific concerns about potential harms to applicants and borrowers in the event of unauthorized access to the HMDA data maintained by the agencies. Commenters asserted that the proposal increased both the potential harm a breach of the HMDA data at the Bureau or another agency could cause affected applicants and borrowers as well as the risk that such a data breach would occur. Many comments stated that the proposed HMDA data could be used to target applicants and borrowers with marketing for harmful financial products and to commit identity theft and other fraud. Several commenters stated that data breaches at corporations and government agencies have become common and suggested that the proposed HMDA data are sufficiently valuable to identity thieves and others that agency systems maintaining the data would be subject to hacks and other attacks aiming to access the data. A few commenters expressed concern that the HMDA data would be vulnerable to unauthorized access during transmission from financial institutions to their regulators. Several industry commenters expressed particular concern with the Bureau's information security practices and suggested that HMDA data held by the Bureau would be at heightened risk of breach. A few of these commenters urged the Bureau to publish the details of its information security practices and procedures in order to address these concerns. Some industry commenters questioned the benefit of some of the proposed data in light of HMDA's purposes. Several commenters argued that, in light of the potential risks to applicant and borrower privacy presented by the compilation and reporting of the some of the proposed data, any benefits of such compilation and reporting were not justified.

In addition, a few commenters expressed concern that compiling and reporting the proposed data would create legal risks for financial institutions and would impose related costs. A few comments suggested that a financial institution would face regulatory or legal liability if an agency suffered a breach that compromised the financial institution's HMDA data. One comment suggested that reporting the proposed data would expose financial institutions to liability under the Right to Financial Privacy Act (RFPA) [18] and a few other commenters suggested that doing so would violate the Gramm-Leach-Bliley Act (GLBA)[19]. Several national trade associations argued that compiling and reporting the proposed data would require financial institutions to strengthen significantly their information security programs and would also increase costs associated with compensating customers in the event of a financial institution's data breach.

The Bureau has analyzed these industry comments carefully and has determined that any risks to applicant and borrower privacy created by the compilation and reporting of the data required under the final rule are justified by the benefits of the data in light of HMDA's purposes.[20] The Bureau takes seriously the concerns raised about the security of reported HMDA data maintained at the agencies. The Bureau has addressed or is actively addressing each of the recommendations made in the Government Accountability Office (GAO) report cited by some industry commenters as a basis for concern that the Bureau's information security practices are insufficient to protect HMDA data.[21] The GAO report

[16] Proposed § 1003.4(a)(9)(i).

[17] Some commenters suggested that the Bureau require certain data to be reported in ranges, rather than exact values, to mitigate privacy concerns. Comments received concerning particular data points are addressed in the applicable section-by-section analysis below.

[18] 12 U.S.C. 3401 *et seq.*

[19] 15 U.S.C. 6801 *et seq.*

[20] Several industry commenters asserted that, under the Bureau's proposal, none of the proposed new data points would be made available to the public, or would be made available only in aggregate form, and that this was evidence of the limited value of the proposed data in light of HMDA's purposes. These commenters misunderstood the proposal. The Bureau proposed that the data financial institutions would disclose on their modified loan/application registers would be limited to the currently disclosed data, *see* proposed § 1003.5(c), but stated that it would apply a balancing test to determine whether and how the HMDA data should be modified prior to its public release by the agencies in their annual loan-level data release, *see* 79 FR 51731, 51742, 51816 (Aug. 29, 2014). Based on its analysis to date, the Bureau believes that some of the proposed new data points may create privacy concerns sufficient to warrant some degree of modification, including redaction, before public disclosure, but it has determined that all of the data required to be compiled and reported under the final rule significantly advance HMDA's purposes.

[21] U.S. Gov't Accountability Office, GAO–14–758, *Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data*

Continued

recognized the many steps that the Bureau has taken to ensure the privacy and security of the data it collects; indeed, the report's recommendations focused primarily on formalizing and documenting the privacy and information security practices the Bureau already had in place at the time the report was issued. The Bureau takes strong measures to mitigate and address any risks to the security of sensitive data it receives, consistent with the guidance and standards set for Federal information security programs,[22] and is committed to protecting the privacy and information security of the HMDA data it receives from financial institutions. As discussed in its proposal,[23] the Bureau is developing improvements to the HMDA data submission process, including, for example, further advancing encryption if necessary to protect data reported under the final rule.

The Bureau does not believe a financial institution could be held legally liable for the exposure of data due to a breach at a government agency or for reporting data to a government agency if the institution was legally required to provide the data to the agency and did so in accordance with other applicable law. The comments raising this concern provided no evidence or analysis concerning how such liability might be created. Contrary to a few commenters' suggestions, reporting data as required under the final rule would not create liability for a financial institution under the RFPA or cause the financial institution to violate the GLBA, as both of these laws permit financial institutions to disclose information as required by Federal law or regulation.[24] Finally, in light of the significant amounts of highly sensitive, personally identifiable information concerning customers that financial institutions collect and maintain in the course of conducting their business regardless of HMDA and Regulation C, the Bureau does not believe the requirement to compile and report some of these data pursuant to the final rule will meaningfully increase financial institutions' information security needs or the amounts required for victim compensation in the event of a financial institution's security breach. The industry commenters that made these arguments offered no detail or evidence of such needs or costs. It is the Bureau's understanding that substantially all of the new data to be compiled under the final rule are either data that HMDA reporters compile for reasons other than HMDA or Regulation C or are calculations that derive from such data, and must be retained by a financial institution to comply with other applicable laws.

Disclosures of HMDA Data

As discussed in part II.A above, HMDA is a disclosure statute. To fulfill HMDA's purposes, the types of data a financial institution is required to compile and report under HMDA and Regulation C have been expanded since the statute's enactment in 1975, and the formats in which HMDA data have been disclosed to the public also have evolved. At present, HMDA and Regulation C require data to be made available to the public in both aggregate and loan-level formats. First, each financial institution must make its ''modified'' loan/application register available to the public, with three fields deleted to protect applicant and borrower privacy.[25] Each financial institution must also make available to the public a disclosure statement prepared by the FFIEC that shows the financial institution's HMDA data in aggregate form.[26] In addition, the FFIEC makes available to the public disclosure statements for each financial institution [27] as well as aggregate reports for each MSA and metropolitan division (MD) showing lending patterns by certain property and applicant characteristics.[28] Since 1991, on behalf of the agencies receiving HMDA data, the FFIEC also has released annually a loan-level dataset containing all reported HMDA data for the preceding calendar year (the agencies' release). To reduce the possibility that data users could identify particular applicants or borrowers in these data, the same three fields that are deleted from the modified loan/application register are deleted from the agencies' release.[29]

Changes to financial institutions' disclosure obligations under the final rule. The Bureau's proposal addressed both of the disclosures financial institutions must make to the public under current Regulation C. First, the Bureau proposed to allow a financial institution to meet its obligation to make its disclosure statement available to the public by making available a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC Web site and that includes the FFIEC's Web site address.[30] Second, it proposed to require that the modified loan/application register a financial institution must make available show only the data fields that currently are released on the modified loan/application register.[31] The Bureau explained that the new data points adopted under the final rule would be disclosed in the agencies' release, modified as appropriate to protect applicant and borrower privacy.[32] These proposals aimed to reduce burden on financial institutions associated with their disclosure of HMDA data and allow for the appropriate protection of applicant and borrower privacy in HMDA data disclosed by shifting much of the responsibility for making HMDA data available to the public to the agencies.

The Bureau received several comments on the proposed provisions relating to financial institutions' disclosure obligations. As discussed below in the applicable section-by-section analysis, after consideration of

Collections Should Continue Being Enhanced (2014), *available at http://www.gao.gov/assets/670/666000.pdf.* In this report, the GAO examined the Bureau's authority to receive consumer financial information as well as steps taken to implement the privacy and information security protections to address risks associated with the receipt of such information. The report contained eleven recommendations directed to the Bureau.

[22] The Bureau's information security program is aligned with the requirements of the Federal Information Security Management Act of 2002 (FISMA). Like other Federal information security programs, the policies and principles that form the CFPB information security program are based on guidance and standards provided by the National Institute of Standards and Technology (NIST). The Bureau declines to publish details of its information security safeguards, as suggested by some industry commenters, because such disclosure would pose a significant security risk.

[23] 79 FR 51731, 51741 (Aug. 29, 2014).

[24] *See* 12 U.S.C. 3413(d) (providing an exception to the RFPA's general prohibition on disclosure to the Federal government for financial records or information ''required to be reported in accordance with any Federal statute or rule promulgated thereunder''); 15 U.S.C. 6802(e)(8), 12 CFR 1016.15(a)(7)(i) (providing an exception to GLBA's general prohibition on disclosing nonpublic personal information to a nonaffiliated third party absent notice and an opportunity to opt-out of such disclosure where the disclosure is ''to comply with Federal, State, or local laws, rules, and other applicable legal requirements.'').

[25] Section 1003.5(c); HMDA section 304(j)(2)(B). Section 1003.5(c) requires that, before making its loan/application register available to the public, a financial institution must delete three fields to protect applicant and borrower privacy: Application or loan number, the date that the application was received, and the date action was taken.

[26] Section 1003.5(b); HMDA section 304(k).

[27] Section 1003.5(f); HMDA section 304(f).

[28] Section 1003.5(f); HMDA section 310.

[29] The agencies first released loan-level HMDA data in October 1991. In announcing that the loan-level data submitted to the agencies on the loan/application register would be made available to the public, the FFIEC noted that ''[a]n unedited form of the data would contain information that could be used to identify individual loan applicants'' and that the data would be edited prior to public release to remove the application identification number, the date of application, and the date of final action. 55 FR 27886, 27888 (July 6, 1990).

[30] Proposed § 1003.5(b)(2).

[31] Proposed § 1003.5(c).

[32] 79 FR 51731, 51742–43, 51816 (Aug. 29, 2014).

these comments and further analysis, the Bureau has decided to finalize proposed § 1003.5(b)(2) concerning the disclosure statement with minor modifications. The Bureau is not finalizing § 1003.5(c) concerning the modified loan/application register as proposed and instead is aligning § 1003.5(c) with § 1003.5(b)(2) by adopting a requirement that a financial institution make available to the public a notice that clearly conveys that the institution's modified loan/application register may be obtained on the Bureau's Web site. Thus, under the final rule, the disclosure of HMDA data is shifted entirely to the agencies; financial institutions will no longer be required to provide their HMDA data directly to the public, but only a notice advising members of the public seeking their data of where it may be obtained online.

Use of a balancing test to determine data to be publicly disclosed. The Dodd-Frank Act amendments to HMDA added new section 304(h)(1)(E), which directs the Bureau to develop regulations, in consultation with the other agencies, that ''modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.'' Section 304(h)(3)(B), also added by the Dodd-Frank Act, directs the Bureau to ''prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of [HMDA], in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information . . . in aggregate or other reasonably modified form, in order to effectuate the purposes of [HMDA].'' [33]

The Bureau explained in its proposal that it interprets HMDA, as amended by the Dodd-Frank Act, to call for the use of a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes.[34] Using the balancing test to evaluate particular HMDA data points, individually and in combination, and various options for providing access to HMDA data, the Bureau proposed to balance the importance of releasing the data to accomplish HMDA's public disclosure purposes against the potential harm to an applicant or borrower's privacy interest that may result from the release of the data without modification. The proposal explained that modifications the Bureau may consider where warranted include various disclosure limitation techniques, such as techniques aimed at masking the precise value of data points,[35] aggregation, redaction, use restrictions, and query-based systems. HMDA's public disclosure purposes might also be furthered by implementing a restricted access program.[36] The Bureau explained that it interpreted HMDA, as amended by the Dodd-Frank Act, to require that public HMDA data be modified when the release of the unmodified data creates risks to applicant and borrower privacy interests that are not justified by the benefits of such release to the public in light of the statutory purposes. The Bureau also sought comment on its view that, considering the public disclosure of HMDA data as a whole, applicant and borrower privacy interests arise under the balancing test only where the disclosure of HMDA data may both substantially facilitate the identification of an applicant or borrower in the data *and* disclose information about the applicant or borrower that is not otherwise public and may be harmful or sensitive. The proposal explained that the Bureau's analysis of the proposed HMDA data under the balancing test was ongoing and included data fields currently disclosed on the modified loan/application register and in the agencies' release. The Bureau stated that it would provide at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

The Bureau received very few comments concerning the proposed balancing test itself, most of which supported the balancing test. One industry commenter stated that the balancing test was too narrow, but its comment concerned the types of available information the Bureau should consider in analyzing the potential risks of re-identification and harm to applicants and borrowers presented by the public disclosure of HMDA data, and the types of potential harmful uses of HMDA data, rather than the balancing test itself.

The Bureau received many comments from consumer advocates, researchers, industry, and a privacy advocate concerning the application of the balancing test to the current and proposed HMDA data. These comments concerned (i) the benefits of public disclosure of the data, (ii) the potential risks to applicant and borrower privacy created by such disclosure, and (iii) modifications and data access and use restrictions the Bureau might consider to protect applicant and borrower privacy where warranted.

Many comments, especially from consumer advocates and researchers, identified the benefits of public disclosure of the current and proposed HMDA data. These commenters noted that public disclosure is the fundamental purpose of the Act and argued that public availability of HMDA data: Allows the public to supplement limited government resources to enforce fair lending and other laws and otherwise accomplish the goals of the Act; mitigates the impact of regulator capture or inattention to illegal practices and troublesome trends; and reduces information asymmetry between industry and the public concerning the residential mortgage market.

Several comments raised concerns about potential risks to applicant and borrower privacy created by the disclosure of HMDA data. Similar to comments received concerning such potential risks associated with the compilation and reporting of HMDA data, these comments addressed sources of data that could be combined with HMDA data to identify applicants and borrowers in the HMDA data. Several comments also suggested that the Bureau consider how HMDA data may be combined with other available data to harm consumers. Many comments, especially from industry, raised concerns about a variety of specific proposed data points as well as potential harmful uses to which data disclosed to the public may be put, including fraud, identity theft, and

[33] Section 304(h)(3)(A) provides that a modification under section 304(h)(1)(E) shall apply to information concerning ''(i) credit score data . . . in a manner that is consistent with the purpose described in paragraph (1)(E); and (ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.''

[34] Section 1022(c)(8) of the Dodd-Frank Act provides that, ''[i]n collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that'' certain information is not ''made public under this title.'' The Bureau interprets ''under this title'' to not include data made public pursuant to HMDA and Regulation C.

[35] Binning and suppression are examples of commonly-used data masking techniques. Binning, sometimes known as recoding or interval recoding, provides only a range for certain fields. Binning allows data to be shown clustered into ranges rather than as precise values.

[36] A restricted access program could allow ''trusted researchers'' access to privacy-sensitive information that is unavailable to the public, for research purposes.

targeted marketing of harmful financial products.

Finally, several comments concerned data access and use restrictions that the Bureau could consider. Some consumer advocate and researcher comments offered suggestions and recommendations concerning a restricted access program. Several industry comments expressed concerns about the implementation of a restricted access program, however, including concerns that it may create opportunities for data leakage and unauthorized access to the HMDA data. A privacy advocate commenter urged the Bureau to restrict the uses of HMDA data to certain defined purposes, similar to the approach taken with respect to consumer reports under the Fair Credit Reporting Act.[37]

The Bureau has determined that its interpretation of HMDA to call for the use of the balancing test described above is reasonable and best effectuates the purposes of the statute. The Bureau interprets HMDA, as amended by the Dodd-Frank Act, to require that public HMDA data be modified when the release of the unmodified data creates risks to applicant and borrower privacy interests that are not justified by the benefits of such release to the public in light of the statutory purposes. In such circumstances, the need to protect the privacy interests of mortgage applicants or mortgagors requires that the itemized information be modified. Considering the public disclosure of HMDA data as a whole, applicant and borrower privacy interests arise under the balancing test only where the disclosure of HMDA data may both substantially facilitate the identification of an applicant or borrower in the data *and* disclose information about the applicant or borrower that is not otherwise public and may be harmful or sensitive. Thus, disclosure of an unmodified individual data point or field may create a risk to applicant or borrower privacy interests if such disclosure would either substantially facilitate the identification of an applicant or borrower or disclose information about an applicant or borrower that is not otherwise public and that may be harmful or sensitive. This interpretation implements HMDA sections 304(h)(1)(E) and 304(h)(3)(B) because it prescribes standards for requiring modification of itemized information, for the purpose of protecting the privacy interests of mortgage applicants and borrowers, that is or will be available to the public.

In applying the balancing test, the Bureau will carefully consider all comments received concerning the benefits of disclosure of HMDA data, the risks to applicant and borrower privacy created by such disclosure, and options for data use and access restrictions. However, the Bureau believes that it will be most helpful in applying the balancing test to provide an additional process through which all stakeholders can provide additional comment now that the data to be compiled and reported are finalized. Accordingly, the Bureau intends to provide a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.

The Bureau received some comments suggesting that disclosure of certain HMDA data could reveal confidential business information. As these comments do not concern applicant and borrower privacy, they are addressed in the appropriate section-by-section analyses below.

III. Summary of the Rulemaking Process

This final rule is the product of several years of research and analysis. In 2010, when the Board had rulemaking authority over HMDA, the Board conducted a series of public hearings that elicited feedback on improvements to Regulation C. After the rulemaking authority for HMDA was transferred to the Bureau, the Bureau conducted additional outreach by soliciting feedback in **Federal Register** notices, by meeting with community groups, financial institutions, trade associations, and other Federal agencies, and by convening a Small Business Review Panel. To prepare this final rule, the Bureau considered, among other things, the comments presented to the Board during its public hearings, feedback provided to the Bureau prior to the issuance of its proposal, including information provided during the Small Business Review Panel, interagency consultations, and feedback provided in response to the proposed rule.

A. Pre-Proposal Outreach

In 2010, the Board convened public hearings on potential revisions to Regulation C (the Board's 2010 Hearings).[38] The Board began the reassessment of HMDA in the aftermath of the financial crisis, as Congress was considering the legislation that later became the Dodd-Frank Act. Participants addressed whether the Board should require reporting from additional types of institutions, whether certain types of institutions should be exempt from reporting, and whether any other changes should be made to the rules for determining which types of institutions must report data. For example, representatives from Federal agencies, lenders, and consumer advocates urged the Board to adopt a consistent minimum loan threshold across all types of institutions, including banks, savings associations, credit unions, and nondepository institutions.[39] In particular, industry representatives noted the limited value derived from data reported by lower-volume depository institutions.[40] Industry and community advocate representatives also asserted that loan volume, rather than asset size, should trigger reporting, particularly for nondepository lenders because they tend to have a different capital structure than banks, savings associations, and credit unions.[41] Participants also urged the Board to expand coverage of nondepository institutions.[42] In addition, participants commented that the coverage scheme for nondepository institutions was too complex and should be simplified.[43]

The Board solicited feedback on ways to improve the quality and usefulness of HMDA data, including whether any data elements should be added, modified, or deleted. Participants provided

[37] 15 U.S.C. 1681 *et seq.*

[38] *See* 75 FR 35030 (June 21, 2010).

[39] Transcript of Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Washington DC (Sept. 24, 2010) [hereinafter Washington Hearing], (remarks of Faith Schwartz, Senior Advisory, HOPE Now Alliance) (''I think everyone should have the burden of reporting that has any meaningful originations out there. * * *''), *http://www.federalreserve.gov/communitydev/files/full_transcript_board_20100924.pdf ; id.* (remarks of Josh Silver, Vice President of Research and Policy, National Community Reinvestment Coalition) (''[I]n terms of your threshold, it is very confusing because you have depository institutions that have different thresholds and nondepository institutions . . . I suggested just make it the same for everybody. If you make more than [50 reportable loans under HMDA], you disclose.. . . So that's a threshold I would propose across the board for nondepository institutions and depository institutions.'').

[40] *See, e.g.,* Transcript of Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Atlanta, Georgia (July 15, 2010) [hereinafter Atlanta Hearing], *http://www.federalreserve.gov/communitydev/files/full_transcript_atlanta_20100715.pdf.*

[41] *See, e.g., id.* (remarks of Faith Anderson, Vice President and General Counsel, American Airlines Federal Credit Union) (''[A]n exemption from HMDA reporting should be based on the volume of mortgage loans that are given. Exemptions should not be based on the asset size of a financial institution.'').

[42] *See, e.g.,* Transcript of Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, San Francisco, California (Aug. 5, 2010) [hereinafter San Francisco Hearing], *http://www.federalreserve.gov/communitydev/files/full_transcript_sf_20100805.pdf*; Washington Hearing, *supra* note 39; Atlanta Hearing, *supra* note 40.

[43] *See, e.g.,* Washington Hearing, *supra* note 39.

suggestions about ways to improve the utility of HMDA data. Participants discussed modifications to the data fields currently collected in Regulation C that may clarify reporting requirements and improve the usefulness of HMDA data. For example, participants urged the Board to augment the information collected concerning multifamily properties[44] and manufactured housing[45] and to expand the reporting of rate spread to all originations.[46] Participants also urged the Board to clarify specific reporting requirements, such as how to report modular homes[47] and conditional approvals.[48] Participants discussed the reluctance of applicants to provide demographic information, such as race and ethnicity, and the challenges financial institutions face in collecting the information.[49]

In addition, participants commented on data fields that could be added to the data collected under HMDA to improve its utility. For example, participants suggested collecting information regarding points and fees, including prepayment penalties,[50] information concerning the relationship of the loan amount to the value of the property securing the loan,[51] and information concerning whether an application was submitted through a mortgage broker.[52]

In developing the proposal to amend Regulation C, the Bureau, through outreach and meetings with stakeholders, built on the feedback received during the Board's 2010 HMDA hearings. The Bureau conducted meetings in-person and through conference calls. In addition, the Bureau solicited feedback through correspondence and **Federal Register** notices.[53]

In 2011, the Bureau issued a proposed rule seeking feedback on regulations inherited from other agencies (2011 Streamlining Proposal).[54] While the Bureau sought general feedback on opportunities to streamline inherited regulations, the Bureau also solicited specific feedback on whether a small number of refinancings should not trigger Regulation C coverage.[55] The Bureau received comments from consumer advocates, fair housing advocates, financial institutions, State bank supervisory organizations, and national industry trade associations. Comments addressed issues ranging from reporting thresholds and data reporting exemptions to clarifying certain definitions and reporting issues.[56]

On December 19, 2011, the Bureau published an interim final rule establishing Regulation C in 12 CFR part 1003, implementing the assumption of HMDA authority from the Board (the Bureau's 2011 Regulation C Restatement).[57] The Bureau's 2011 Regulation C Restatement substantially duplicated the Board's Regulation C and made only non-substantive, technical, formatting, and stylistic changes. As part of the Bureau's 2011 Regulation C Restatement, the Bureau solicited comment on any outdated, unduly burdensome, or unnecessary technical issues and provisions.[58] Commenters generally suggested aligning Regulation C definitions with other regulations, providing a tolerance for enforcement actions based on low error rates, and establishing a loan-volume threshold. Commenters also raised other issues, some of which the Bureau discussed in the proposal and which are also discussed in the section-by-section analysis below.

The Bureau met with a few groups to better understand existing and emerging data standards and whether Regulation C could be aligned with those standards. The Bureau met with staff from Mortgage Industry Standards Maintenance Organization (MISMO)[59] and the GSEs[60] regarding the MISMO dataset and the ULDD[61], respectively. The Bureau also met with community, regional, and national banks to understand their HMDA compliance processes and obtain feedback on areas for improvement, and with consumer and fair housing advocates as well as industry trade associations to understand their concerns with the HMDA data and Regulation C.

B. Small Business Review Panel

In February 2014, the Bureau convened a Small Business Review Panel (Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[62] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (Small Business Review Panel Outline), which the Bureau posted on its Web site for review by the small financial institutions participating in the panel process, as well as the general public.[63]

Prior to formally convening, the Panel participated in teleconferences with small groups of the small entity representatives to introduce the materials and to obtain feedback. The Panel conducted a full-day outreach meeting with the small entity representatives in March 2014 in Washington, DC. The Panel gathered information from the small entity representatives and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. Those findings and

[44] *See, e.g.,* San Francisco Hearing, *supra* note 42; Washington Hearing, *supra* note 39.

[45] *See, e.g., id.*

[46] *See, e.g.,* Atlanta Hearing, *supra* note 40; Transcript of Fed. Reserve Board Public Hearing on Potential Revisions to the Home Mortgage Disclosure Act, Chicago, Illinois (Sept. 16, 2010) [hereinafter Chicago Hearing], *http://www.federalreserve.gov/communitydev/files/full_transcript_chicago_20100916.pdf*; *id.* (remarks of Professor Jim Campen, University of Massachusetts).

[47] *See, e.g.,* Atlanta Hearing, *supra* note 40.

[48] *See, e.g.,* Washington Hearing, *supra* note 39.

[49] *See, e.g.,* Atlanta Hearing, *supra* note 40; San Francisco Hearing, *supra* note 42; Chicago Hearing, *supra* note 46.

[50] *See, e.g.,* San Francisco Hearing, *supra* note 42; Chicago Hearing, *supra* note 46.

[51] *See, e.g.,* Atlanta Hearing, *supra* note 40; San Francisco Hearing, *supra* note 42; Chicago Hearing, *supra* note 46; Washington Hearing, *supra* note 39.

[52] *See, e.g.,* Chicago Hearing, *supra* note 46.

[53] 76 FR 31222 (May 31, 2011); 76 FR 43570 (Jul. 21, 2011); 76 FR 75825 (Dec. 5, 2011); 76 FR 78465 (Dec. 19, 2011).

[54] 76 FR 75825 (Dec. 5, 2011).

[55] The Bureau noted in the 2011 Streamlining Proposal that a depository institution that did not ordinarily originate home purchase loans, but that occasionally refinanced a home purchase loan to accommodate a customer, would be required to report under Regulation C. 76 FR 75825, 75828 (Dec. 5, 2011).

[56] The Bureau's 2014 HMDA proposal provides a more detailed description of the comments received. *See* 79 FR 51731, 51744 (Aug. 29, 2014).

[57] 76 FR 78465 (Dec. 19, 2011).

[58] *Id.*

[59] MISMO is the federally registered service mark of the Mortgage Industry Standards Maintenance Organization, a wholly-owned subsidiary of the Mortgage Bankers Association.

[60] Government-sponsored enterprises, specifically Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac).

[61] The Uniform Loan Delivery Dataset is a common set of data elements required by Fannie Mae and Freddie Mac.

[62] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have significant economic impact on a substantial number of small entities. *See* Public Law 104–121, tit. II, 110 Stat. 847, 857 (1996) as amended by Public Law 110–28, and Public Law 111–203, section 1100G (2010).

[63] Press Release, CFPB Takes Steps to Improve Information About Access to Credit in the Mortgage Market (Feb. 7, 2014), *http://www.consumerfinance.gov/newsroom/cfpb-takes-steps-to-improve-information-about-access-to-credit-in-the-mortgage-market/*. The Bureau also gathered feedback on the Small Business Review Panel Outline from other stakeholders and members of the public, and from the Bureau's Consumer Advisory Board and Community Bank Advisory Council.

recommendations are set forth in the Panel's report (Small Business Review Panel Report), which will be made part of the administrative record in this rulemaking.[64] The Bureau carefully considered the findings and recommendations in preparing the proposal and this final rule.

C. The Bureau's Proposal

In July 2014, the Bureau published on its Web site for public comment a proposed rule regarding Regulation C to implement section 1094 of the Dodd-Frank Act, which amended HMDA to improve the utility of the HMDA data and revise Federal agency rulemaking and enforcement authorities. The proposal was published in the **Federal Register** in August 2014.[65] The Bureau proposed modifications to the institutional coverage and transactional coverage in light of market conditions, to reduce burden on financial institutions, and to address gaps in the HMDA data regarding certain segments of the housing market. The proposed modification to institutional coverage would have simplified the coverage criteria for depository and nondepository institutions with a uniform threshold of 25 loans. Under the proposal, depository and nondepository institutions that originated 25 covered loans, excluding open-end lines of credit, in the previous calendar year would be required to report HMDA data so long as all the other reporting criteria were met. The proposed modification to transactional coverage would have expanded the types of transactions subject to Regulation C. Under the proposal, financial institutions would be required to report all closed-end loans, open-end lines of credit, and reverse mortgages secured by dwellings, which would have relieved financial institutions from the requirement to ascertain an applicant's intended purpose for a dwelling-secured loan to determine if the loan was reportable under HMDA.

The Bureau also proposed modifications to reportable data requirements. First, the Bureau proposed to align many HMDA data requirements with the MISMO data standards for residential mortgages. Second, the Bureau proposed to modify existing data points already established under Regulation C as well as add new data points to the reporting requirements. Some of these data points were specifically identified by the Dodd-Frank Act and others were proposed pursuant to the Bureau's discretionary rulemaking authority to carry out the purposes of HMDA by addressing data gaps. The following four categories of new or modified data points were proposed by the Bureau:

- Information about applicants, borrowers, and the underwriting process, such as age, credit score, debt-to-income ratio, reasons for denial if the application was denied, the application channel, and automated underwriting system results.
- Information about the property securing the loan, such as construction method, property value, lien priority, the number of individual dwelling units in the property, and additional information about manufactured and multifamily housing.
- Information about the features of the loan, such as additional pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and the type of loan.
- Certain unique identifiers, such as a universal loan identifier, property address, loan originator identifier, and a legal entity identifier for the financial institution.

In addition, the Bureau proposed modifications to the disclosure and reporting requirements and clarifications to the regulation. Under the proposal, financial institutions that report large volumes of HMDA data would be required to submit their data to the appropriate agency on a quarterly basis rather than an annual basis. The Bureau noted its belief that quarterly reporting would reduce reporting errors and improve the quality of HMDA data, allow regulators to use the data in a more timely and effective manner, and could facilitate an earlier release of annual HMDA data to the public. The Bureau also proposed to allow HMDA reporters to make their disclosure statements available by referring members of the public that request a disclosure statement to a publicly available Web site, which would facilitate public access to the HMDA data and minimize the burden on HMDA reporters.

The Bureau also proposed clarifications to Regulation C to address issues that are unclear or confusing. These proposed clarifications included guidance on types of residential structures that are considered dwellings; the treatment of manufactured and modular homes and multiple properties; preapproval programs and temporary financing; how to report a transaction that involved multiple financial institutions; reporting the action taken on an application; and reporting the type of purchaser for a covered loan.

D. Feedback Provided to the Bureau

The Bureau received approximately 400 comments on the HMDA proposal during the comment period from, among others, consumer advocacy groups; national, State, and regional industry trade associations; banks, community banks, credit unions, software providers, housing counselors; Federal agencies, including the Office of Advocacy of the Small Business Administration (SBA); and individual consumers and academics. In addition, the Bureau also considered other information, including ex parte communications.[66] Materials on the record are publicly available at *http://www.regulations.gov*. This information is discussed below in the section-by-section analysis and subsequent parts of the notice, as applicable. The Bureau considered the comments and ex parte communications, modified the proposal in certain respects, and adopts the final rule as described below in the section-by-section analysis.

IV. Legal Authority

The Bureau is issuing this final rule pursuant to its authority under the Dodd-Frank Act and HMDA. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board.[67] The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [68] Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau's Director to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' [69] Both HMDA and title X of the Dodd-Frank Act are Federal

[64] *See Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking* (April 24, 2014), *http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf*.

[65] 79 FR 51731 (Aug. 29, 2014). See part II.A for a discussion of section 1094 of the Dodd-Frank Act.

[66] CFPB Bulletin 11–3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (2011), *available at http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf*.

[67] 12 U.S.C. 5581. Section 1094 of the Dodd-Frank Act also replaced the term ''Board'' with ''Bureau'' in most places in HMDA. 12 U.S.C. 2803 *et seq.*

[68] 12 U.S.C. 5581(a)(1)(A).

[69] 12 U.S.C. 5512(b)(1).

consumer financial laws.[70] Accordingly, the Bureau has authority to issue regulations to administer HMDA.

HMDA section 305(a) broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes.[71] These regulations can include ''classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Bureau are necessary and proper to effectuate the purposes of [HMDA], and prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' [72]

A number of HMDA provisions specify that covered institutions must compile and make their HMDA data publicly available ''in accordance with regulations of the Bureau'' and ''in such formats as the Bureau may require.'' [73] HMDA section 304(j)(1) authorizes the Bureau to issue regulations to define the loan application register information that HMDA reporters must make available to the public upon request and to specify the form required for such disclosures.[74] HMDA section 304(j)(2)(B) provides that ''[t]he Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—(i) any privacy interest of any applicant . . .; and (ii) a depository institution from liability under any Federal or State privacy law.'' [75] HMDA section 304(j)(7) also directs the Bureau to make every effort in prescribing regulations under the subsection to minimize the costs incurred by a depository institution in complying with the subsection and regulations.[76]

HMDA section 304(e) directs the Bureau to prescribe a standard format for HMDA disclosures required under HMDA section 304.[77] As amended by the Dodd-Frank Act, HMDA section 304(h)(1) requires HMDA data to be submitted to the Bureau or to the appropriate agency for the reporting financial institution ''in accordance with rules prescribed by the Bureau.'' [78] HMDA section 304(h)(1) also directs the Bureau, in consultation with other appropriate agencies, to develop regulations after notice and comment that:

(A) Prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

(B) require the collection of data required to be disclosed under [HMDA section 304(b)] with respect to loans sold by each institution reporting under this title;

(C) require disclosure of the class of the purchaser of such loans;

(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.[79]

HMDA also authorizes the Bureau to issue regulations relating to the timing of HMDA disclosures.[80]

As amended by the Dodd-Frank Act, HMDA section 304 requires itemization of specified categories of information and ''such other information as the Bureau may require.'' [81] Specifically, HMDA section 304(b)(5)(D) requires reporting of ''such other information as the Bureau may require'' for mortgage loans, and section 304(b)(6)(J) requires reporting of ''such other information as the Bureau may require'' for mortgage loans and applications. HMDA section 304 also identifies certain data points that are to be included in the itemization ''as the Bureau may determine to be appropriate.'' [82] It provides that age and other categories of data shall be modified prior to release ''as the Bureau determines to be necessary'' to satisfy the statutory purpose of protecting the privacy interests of the mortgage applicants or mortgagors.[83]

The Dodd-Frank Act amendments to HMDA also authorize the Bureau's Director to develop or assist in the improvement of methods of matching addresses and census tracts to facilitate HMDA compliance by depository institutions in as economical a manner as possible.[84] The Bureau, in consultation with the Secretary of HUD, may also exempt for-profit mortgage-lending institutions that are comparable within their respective industries to a bank, savings association, or credit union that has total assets of $10,000,000 or less.[85]

In preparing this final rule, the Bureau has considered the changes below in light of its legal authority under HMDA and the Dodd-Frank Act. The Bureau has determined that each of the changes addressed below is consistent with the purposes of HMDA and is authorized by one or more of the sources of statutory authority identified in this part.

V. Section-by-Section Analysis

Section 1003.1 Authority, Purpose, and Scope

1(c) Scope

As summarized in part I, the Bureau proposed to revise the provisions of Regulation C that determine which financial institutions and transactions are covered by the regulation. The Bureau also proposed to reorganize the regulation to reduce burden. The Bureau proposed to revise § 1003.1(c) and its accompanying commentary to reflect both the proposed substantive changes to Regulation C's institutional and transactional coverage and the proposed reorganization of the regulation. The Bureau did not receive any comments addressing proposed § 1003.1(c).[86] As

[70] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include HMDA).

[71] 12 U.S.C. 2804(a).

[72] *Id.*

[73] *See, e.g.,* HMDA section 304(a)(1), (j)(2)(A), (j)(3), (m)(2), 12 U.S.C. 2803(a)(1), (j)(2)(A), (j)(3), (m)(2); *see also* HMDA section 304(b)(6)(I), 12 U.S.C. 2803(b)(6)(I) (requiring covered institutions to use ''such form as the Bureau may prescribe'' in reporting credit scores of mortgage applicants and mortgagors). HMDA section 304(k)(1) also requires depository institutions covered by HMDA to make disclosure statements available ''[i]n accordance with procedures established by the Bureau pursuant to this section.'' 12 U.S.C. 2803(k)(1).

[74] 12 U.S.C. 2803(j)(1).

[75] 12 U.S.C. 2803(j)(2)(B).

[76] 12 U.S.C. 2803(j)(7).

[77] 12 U.S.C. 2803(e).

[78] 12 U.S.C. 2803(h)(1); *see also* HMDA section 304(n), 12 U.S.C. 2803(n) (discussing submission to the Bureau or the appropriate agency ''in accordance with regulations prescribed by the Bureau''). For purposes of HMDA section 304(h), HMDA section 304(h)(2) defines the appropriate agencies for different categories of financial institutions. The agencies are the Federal banking agencies, the FDIC, the NCUA, and the Secretary of HUD. 12 U.S.C. 2803(h)(2).

[79] 12 U.S.C. 2803(h)(1). The Dodd-Frank Act also added new HMDA section 304(h)(3), which directs the Bureau to prescribe standards for any modification pursuant to HMDA section 304(h)(1)(E), to effectuate HMDA's purposes, in light of the privacy interests of mortgage applicants or mortgagors. 12 U.S.C. 2803(h)(1)(E), 2803(h)(3).

[80] HMDA section 304(*l*)(2)(A), 12 U.S.C. 2803(*l*)(2)(A) (setting maximum disclosure periods except as provided under other HMDA subsections and regulations prescribed by the Bureau); HMDA section 304(n), 12 U.S.C. 2803(n).

[81] HMDA section 304(b)(5)(D), (b)(6)(J), 12 U.S.C. 2803(b)(5)(D), (b)(6)(J).

[82] HMDA section 304(b)(6)(F), (G), (H), 12 U.S.C. 2803(b)(6)(F), (G), (H).

[83] HMDA section 304(h)(3)(A)(ii), 12 U.S.C. 2803(h)(3)(A)(ii).

[84] HMDA section 307(a), 12 U.S.C. 2806(a) (authorizing the Bureau's Director to utilize, contract with, act through, or compensate any person or agency to carry out this subsection).

[85] HMDA section 309(a), 12 U.S.C. 2808(a).

[86] The Bureau received a large number of comments about the proposed revisions to Regulation C's transactional and institutional

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discussed in the section-by-section analyses of § 1003.2(d), (e), (g), and (o) and of § 1003.3, the final rule in some cases revises the Bureau's proposed changes to institutional and transactional coverage. However, none of those changes affect the technical revisions that the Bureau proposed for § 1003.1(c). The Bureau thus is finalizing § 1003.1(c) largely as proposed, with several non-substantive revisions for clarity.

Section 1003.2 Definitions

Section 1003.2 of Regulation C sets forth definitions that are used in the regulation. As discussed below, the Bureau proposed both substantive revisions to several definitions and technical revisions to § 1003.2 to enumerate the terms defined therein. The Bureau addresses comments concerning its proposed substantive revisions below. The Bureau received no comments opposing its proposal to enumerate the terms in § 1003.2, and the final rule sets forth enumerations for all such terms. The Bureau believes that this technical revision will facilitate compliance with Regulation C by making defined terms easier to locate and cross-reference in the regulation, commentary, and the procedures published by the Bureau.

2(a) Act

Section 1003.2 of Regulation C sets forth a definition for the term ''act.'' The Bureau is adopting a technical amendment to add a paragraph designation for this definition. No substantive change is intended.

2(b) Application

2(b)(1) In General

Section 1003.2 currently defines an application as an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with the procedures used by a financial institution for the type of credit requested. The Bureau proposed to make technical corrections and minor wording changes to conform the definition of application to the proposed changes in transactional coverage. In addition, the Bureau proposed to make technical and minor wording changes to the applicable commentary. For the reasons discussed below, the Bureau is adopting § 1003.2(b)(1) and the associated commentary as proposed.

Commenters generally addressed aspects of the definition of application that differ from other regulations or challenges in applying the definition in multifamily and commercial lending. The Bureau received several comments urging that the Regulation C definition of application should be aligned with the definition used in Regulation Z § 1026.2(a)(3)(ii) to simplify compliance across regulations. As the Bureau noted in the proposed rule, the Bureau did not propose to align the definitions because they serve different purposes.[87] The definition of application in Regulation Z § 1026.2(a)(3)(ii) establishes a clear rule for triggering when disclosures must be provided. In contrast, the definition for Regulation C is closely related to Regulation B and serves HMDA's fair lending purposes by requiring information about the disposition of credit requests received by financial institutions that do not lead to originations.[88] Therefore it is important for the Regulation C definition of application to be based on the procedures used by the financial institution for the type of credit requested rather than the defined elements of the definition in Regulation Z § 1026.2(a)(3)(ii) under which creditors may be sequencing and structuring their information collection processes in various different ways.[89]

Some comments argued that the definition of application would be difficult to comply with for multifamily loans, which generally involve a more fluid application process. They also argued that the Bureau should exclude ''pitch book requests'' from the definition of application. Pitch book requests are preliminary investment packages related to multifamily residential structures requesting specific loans terms. The Bureau has considered the comments but believes that changes to the proposed definition of application related to multifamily loans are not warranted. Because the definition of application in Regulation C is closely related to the Regulation B definition of application and Regulation B applies to business credit, including multifamily lending,[90] the Bureau believes that the flexible definition of application as proposed and the commentary in Regulation B and Regulation C provide adequate guidance for multifamily lending. The Bureau is also concerned that an exception for pitch book requests may be difficult to adopt because financial institutions may have different definitions of pitch book request or procedures for handlings them. The Bureau is not adopting an exclusion specific to pitch book requests, and believes that the existing commentary regarding the definition of application and prequalifications is appropriate.[91] Whether pitch book requests would be considered applications under Regulation C would depend on how the specific financial institution treated such requests under its application process for covered loans secured by multifamily residential structures under the definition of application in Regulation C. As discussed below, the Bureau is also excluding covered loans secured by multifamily dwellings from the definition of a preapproval program, which may address some of the commenters' concerns. After considering the comments, the Bureau is finalizing § 1003.2(b)(1) and comments 2(b)–1 and 2(b)–2 as proposed.

2(b)(2) Preapproval Programs

Regulation C incorporates certain requests under preapproval programs into the definition of application under § 1003.2. Such programs are only covered if they involve a comprehensive analysis of the creditworthiness of the applicant and include a written commitment for up to a specific amount, subject only to certain limited conditions. The Bureau proposed to make technical and clarifying wording changes to the definition of a preapproval program under § 1003.2(b)(2) and the applicable commentary to add language adapted from additional FAQs regarding preapproval programs that had been provided by the FFIEC.[92] For the reasons discussed below, the Bureau is finalizing § 1003.2(b)(2) with modifications to exclude certain types of covered loans from the definition.

Several commenters addressed the Bureau's proposed definition of preapproval programs. Some commenters questioned the value of preapproval reporting or argued that preapproval reporting discourages financial institutions from offering preapproval programs. However, the Bureau is not excluding preapproval requests from Regulation C in this final rule because this information is valuable for fair lending purposes, as it provides visibility into how applicants are treated in an early stage of the lending

coverage. Those comments are addressed in the section-by-section analyses of § 1003.2(d), (e), (g), (o) and of § 1003.3(c)(10).

[87] 79 FR 51731, 51746 (Aug. 29, 2014).

[88] 12 CFR 1003.2, comment Application–1; 12 CFR 1002.2(f).

[89] 78 FR 79730, 79767 (Dec. 31, 2013).

[90] 12 CFR 1002.2(j), comment 2(j)–1.

[91] See existing comment Application–2, final comment 2(b)–2.

[92] 79 FR 51731, 51747 (Aug. 29, 2014).

process.[93] The statute requires lenders to report action taken on applications,[94] and the Bureau believes that requests for preapproval as defined in the proposal and final rule represent credit applications. The Bureau does not believe that Regulation C's coverage of preapproval programs has discouraged offering of preapproval programs, and it concludes that any discouragement would be justified by the benefits of reporting. The reporting requirement is limited only to preapproval programs that meet certain conditions. Additionally, the Bureau is finalizing changes to comment 2(b)–3 that specify that programs described as preapproval programs that do not meet the definition in § 1003.2(b)(2) are not preapproval programs for purposes of HMDA reporting.

Some commenters requested clarification about occasional preapprovals and some argued for a broader and more flexible definition of preapproval programs. The Bureau is not adopting a broader or more flexible definition of preapproval programs because it believes that limiting the scope of the definition allows for comparison of similar programs across institutions, where a broader definition could expand reportable transactions, lead to new compliance issues, and make preapproval data less comparable across institutions. The Bureau continues to believe that a financial institution that does not have a preapproval program and only occasionally considers preapproval requests on an ad hoc basis need not report those transactions and believes that proposed comment 2(b)–3 addresses the commenters' concerns. It provides, in part, that a financial institution need not treat ad hoc requests as part of a preapproval program for purposes of Regulation C. The Bureau is therefore finalizing comment 2(b)–3 as proposed.

After considering the comments and conducting additional analysis, the Bureau is finalizing § 1003.2(b)(2) generally as proposed, with minor revisions to exclude home purchase loans that will be open-end lines of credit, reverse mortgages, or secured by multifamily dwellings. Some loans secured by multifamily dwellings have been previously reported in HMDA under preapproval programs. The definition of a home purchase loan could include these types of loans. The definition of preapproval programs in current Regulation C and adopted by the final rule is primarily focused on programs associated with closed-end home purchase loans for one- to four-unit dwellings. The Bureau believes it is appropriate to categorically exclude loans secured by multifamily dwellings, open-end lines of credit, and reverse mortgages from the definition of preapproval programs in order to facilitate consistent reporting and analysis of preapprovals by limiting the definition to closed-end home purchase loans for one- to four-unit dwellings.

2(c) Branch Office

Section 1003.2 currently provides a definition of branch office, which includes separate definitions for branches of (1) banks, savings associations, and credit unions and (2) for-profit mortgage-lending institutions (other than banks, savings associations, and credit unions). The Bureau proposed technical and nonsubstantive modifications to the definition of branch office. The Bureau received no comments on proposed § 1003.2(c) or proposed comments 2(c)–2 and –3. The Bureau is adopting § 1003.2(c) and comments 2(c)–2 and –3, renumbered as comment 2(c)(1)–2 and comment 2(c)(2)–1, with technical modifications. The Bureau is also republishing comment (Branch Office)–1, renumbered as comment 2(c)(1)–1.

2(d) Closed-End Mortgage Loan

Under existing Regulation C, financial institutions must report information about applications for, and originations of, closed-end loans made for one of three purposes: Home improvement, home purchase, or refinancing.[95] Closed-end home purchase loans and refinancings must be reported if they are dwelling-secured.[96] Closed-end home improvement loans must be reported whether or not they are dwelling-secured.

As discussed in the section-by-section analysis of § 1003.2(e) (''covered loan''), the Bureau proposed to adjust Regulation C's transactional coverage to require financial institutions to report all dwelling-secured loans (and applications), instead of reporting only those loans and applications for the purpose of home improvement, home purchase, or refinancing.[97] To facilitate this shift in transactional coverage, the Bureau proposed to define the term ''closed-end mortgage loan'' in Regulation C. Proposed § 1003.2(d) provided that a closed-end mortgage loan was a dwelling-secured debt obligation that was not an open-end line of credit under § 1003.2(o), a reverse mortgage under § 1003.2(q), or an excluded transaction under § 1003.3(c). The Bureau did not propose commentary to accompany proposed § 1003.2(d) but solicited feedback about whether commentary would be helpful.

The proposal to remove Regulation C's current purpose-based reporting approach for closed-end mortgage loans in some cases broadened, and in some cases limited, the closed-end loans that would be reported under the regulation. For example, the proposal provided for reporting of all closed-end home-equity loans and all closed-end, dwelling-secured commercial-purpose loans. At the same time, the proposal eliminated the requirement to report home improvement loans not secured by a dwelling.

As discussed in the section-by-section analysis of § 1003.2(e), the Bureau is finalizing the proposed shift to dwelling-secured transactional coverage for consumer-purpose transactions and is retaining Regulation C's traditional purpose test for commercial-purpose transactions. The Bureau believes that the shift serves HMDA's purposes, will improve HMDA data, and will simplify transactional reporting requirements. Accordingly, the Bureau is finalizing § 1003.2(d) largely as proposed, but with technical revisions for clarity, to define the universe of closed-end mortgage loans that must be reported under Regulation C unless otherwise excluded under § 1003.3(c). The Bureau also is finalizing commentary to § 1003.2(d) to address questions that commenters raised about the scope of the closed-end mortgage loan definition.

Relatively few commenters specifically addressed the benefits and burdens of reporting all dwelling-secured, consumer-purpose, closed-end mortgage loans.[98] Consumer advocacy

[93] 67 FR 7222, 7224 (Feb. 15, 2002); 79 FR 51731, 51747 (Aug. 29, 2014).

[94] HMDA section 303(4).

[95] Reverse mortgages currently are subject to these same criteria for reporting; thus, a closed-end reverse mortgage currently must be reported if it is for one of Regulation C's three purposes.

[96] Regulation C defines ''dwelling'' broadly to include single-family homes, rental properties, multifamily residential structures (*e.g.,* apartment buildings), manufactured homes, and vacation homes. *See* the section-by-section analysis of § 1003.2(f) and related commentary.

[97] As discussed in the section-by-section analysis of § 1003.2(o) and (q), the proposal applied the same dwelling-secured test to open-end lines of credit and reverse mortgages, the two other categories of ''covered loans'' in proposed § 1003.2(e).

[98] As discussed in the section-by-section analysis of § 1003.2(e), nearly all commenters addressed in some fashion the Bureau's proposal to shift Regulation C's transactional coverage test from a purpose-based test to a collateral-based test. However, most commenters focused either on the benefits and burdens of the shift overall, or on the

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group commenters supported the proposal to cover all such loans, and industry stakeholders expressed mixed views. A number of consumer advocacy group commenters also requested that the Bureau clarify in the final rule whether particular categories of transactions are included under the closed-end mortgage loan definition.

Coverage of Dwelling-Secured, Consumer-Purpose, Closed-End Mortgage Loans

A large number of consumer advocacy group and community development commenters supported having information about all closed-end home-equity loans. They stated that having information about all such loans would be valuable in assessing whether neighborhoods that the consumer groups serve, especially those that are low- and moderate-income, are receiving the full range of credit that they need and would be appropriate to ensure an adequate understanding of the mortgage market.

A small group of industry commenters supported the proposed shift to dwelling-secured coverage to the extent that it meant reporting all dwelling-secured, closed-end, consumer-purpose loans. Some of these commenters argued that reporting all such loans would be less burdensome than discerning whether each loan was for a reportable purpose.[99] Others asserted that dwelling-secured coverage would eliminate the possibility that exists under current Regulation C of erroneously gathering race, gender, and ethnicity data for consumer-purpose loans that later are determined not to be reportable. One industry commenter supported dwelling-secured coverage only for closed-end, consumer-purpose loans secured by one- to four-unit dwellings, arguing that these transactions are the most common, are similar in their underwriting and in their risks to consumers, and have hit the economy hardest when they default en masse. Other industry commenters agreed that the shift to dwelling-secured coverage for closed-end, consumer-purpose loans was appropriate and would serve HMDA's purposes, would simplify reporting, would improve data for HMDA users, and would better align Regulation C's coverage with Regulations X and Z.[100]

As discussed in the section-by-section analysis of § 1003.2(e), a majority of industry commenters opposed the proposed shift to dwelling-secured coverage, and some of those commenters specifically objected to reporting data about all closed-end home-equity loans. Some argued that the Bureau should maintain current coverage; a few argued that closed-end home-equity loans should be excluded from coverage altogether. The commenters argued that funds obtained through home-equity loans could be used for any purpose. If a transaction's funds were not used for home purchase, home improvement, or refinancing purposes, commenters asserted, then having data about that transaction would not serve HMDA's purpose of ensuring that financial institutions are meeting the housing needs of their communities. One commenter argued that concerns about home-equity lending's role in the financial crisis no longer justified covering all home-equity loans, because the Bureau's ability-to-repay and qualified mortgage rules have addressed any issues with such lending.[101] A few commenters also objected that such reporting would increase loan volume or argued that compiling data about all closed-end home-equity loans would be onerous, would require costly systems upgrades, or would distort HMDA data because loans would be reported even if their funds were not used for housing-related purposes.

As discussed in the proposal, the Bureau believes that covering all dwelling-secured, consumer-purpose, closed-end mortgage loans will provide useful data that will serve HMDA's purposes by providing additional information about closed-end home-equity loans, which research indicates were a significant factor leading up to the financial crisis,[102] and which impeded some borrowers' ability to receive assistance through foreclosure relief programs during and after the crisis.[103] The Bureau also believes, as some industry commenters observed, that covering all such transactions will simplify the regulation and ease compliance burden. The Bureau thus is adopting proposed § 1003.2(d) largely as proposed, but with several revisions for clarity, as discussed below.

Clarifications to the Closed-End Mortgage Loan Definition

General. The Bureau is making two clarifying changes to § 1003.2(d) and is adding comment 2(d)–1 to provide general guidance about the definition of closed-end mortgage loan. First, proposed § 1003.2(d) provided that a closed-end mortgage loan was a dwelling-secured debt obligation that was not an open-end line of credit under § 1003.2(o), a reverse mortgage under § 1003.2(q), or an excluded transaction under § 1003.3(c). To align with lending practices, to streamline the definitions of closed-end mortgage loan and open-end line of credit, and to streamline the reverse mortgage flag in final § 1003.4(a)(36), the final rule eliminates the mutual exclusivity between closed-end mortgage loans and reverse mortgages.[104] Second, the final rule eliminates the proposed language that provided that an excluded transaction under § 1003.3(c) was not a closed-end mortgage loan. The Bureau is making this change to avoid circularity with final § 1003.3(c), which incorporates for clarity the defined terms ''closed-end mortgage loan'' and ''open-end line of credit'' into the descriptions of excluded transactions. Final § 1003.2(d) thus provides that a closed-end mortgage loan is a dwelling-secured extension of credit that is not an open-end line of credit under § 1003.2(o). Comment 2(d)–1 provides an example of a loan that is not a closed-end mortgage loan because it is not dwelling-secured.

Extension of credit and loan modifications. As proposed, § 1003.2(d)

specific benefits and burdens of reporting all open-end lines of credit, all reverse mortgages, or all dwelling-secured, commercial-purpose mortgage loans and lines of credit. Those comments are addressed in the section-by-section analyses of § 1003.2(e), (o), (q), and § 1003.3(c)(10), respectively. The section-by-section analysis of § 1003.2(d) focuses on the comments that specifically addressed the proposal to cover all consumer-purpose, closed-end home-equity loans.

[99] One commenter provided a specific example. The commenter stated that, when a borrower owns a home outright but takes out a dwelling-secured debt consolidation loan, the loan is recorded as a refinancing in the lender's loan origination system and on the GSE's standard loan application form. However, the loan currently is not reported under Regulation C because it does not meet the purpose-based test. Therefore, an employee later must remove the transaction manually from the institution's HMDA report. If all dwelling-secured, consumer-purpose, closed-end loans were covered, the transaction would be reported and the extra, manual step of removing the transaction would be unnecessary.

[100] Regulation X implements the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2601 *et seq.* Regulation Z implements the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*

[101] *See* the Bureau's Ability-to-Repay and Qualified Mortgage Standards rule (2013 ATR Final Rule), 78 FR 6408 (Jan. 30, 2013).

[102] *See* 79 FR 51731, 51747–48 (Aug. 29, 2014) (citing Atif Mian & Amir Sufi, *House Prices, Home Equity-Based Borrowing, and the U.S. Household Leverage Crisis,* 101 Am. Econ. Rev. 2132, 2154 (Aug. 2011) and Donghoon Lee et al., Fed. Reserve Bank of New York, Staff Report No. 569, *A New Look at Second Liens,* at 11 (Aug. 2012)).

[103] *See id.* (citing Vicki Been et al., Furman Ctr. for Real Estate & Urban Policy, *Essay: Sticky Seconds—The Problems Second Liens Pose to the Resolution of Distressed Mortgages,* at 13–18 (Aug. 2012)).

[104] As discussed in the section-by-section analysis of § 1003.2(q), under the final rule a reverse mortgage thus may be either a closed-end mortgage loan or an open-end line of credit, as appropriate.

generally provided that a closed-end mortgage loan was a dwelling-secured ''debt obligation.'' Many consumer advocacy group commenters asked the Bureau to clarify the scope of transactions covered under the term ''debt obligation.'' In particular, a large number of consumer advocacy group commenters asked the Bureau to require reporting of all loan modifications.[105] The commenters argued that financial institutions' performance in modifying loans is and will continue to be a major factor in determining whether they are meeting local housing needs, particularly the needs of communities that have been devastated by the mortgage crisis. The commenters also argued that financial institutions' loan modification performance will be a major factor in determining whether they are complying with fair housing and fair lending laws. Specifically, commenters cited several studies showing that, since the mortgage crisis, borrowers of color, or borrowers who live in communities of color or in low-to-moderate income communities, have received less favorable loss mitigation outcomes than white borrowers. Commenters stated that many millions of loan modifications have been made since the mortgage crisis, and millions more will be made in the coming years. Commenters argued that the need for data about loan modifications is compelling given the volume of transactions, the identified fair lending concerns, and the lack of other publicly available data about them.

As several of these commenters noted, however, loan modifications currently are not reported because they are not ''originations'' under existing Regulation C. Indeed, since its adoption, Regulation C has required reporting only of applications, originations, and purchases, and the proposal did not seek to change this. While there is a need for publicly available data about loan modifications, the final rule does not require reporting of loan modifications. Covering all loan modifications would be a complex undertaking and would constitute a major revision of Regulation C. However, the Bureau has no information about the burdens to financial institutions of reporting loan modifications under Regulation C, and the Bureau neither has proposed, nor has received feedback about, how existing data points would need to be modified, or whether additional data points would be required, to accommodate reporting of loan modifications.

After considering the comments, the Bureau is adopting § 1003.2(d) to provide that a ''closed-end mortgage loan'' is a dwelling-secured ''extension of credit'' that is not an open-end line of credit under § 1003.2(o). Comment 2(d)–2 provides guidance about ''extension of credit.'' First, comment 2(d)–2 provides an example of a transaction that is not a closed-end mortgage loan because no credit is extended. Comment 2(d)–2 also explains that, for purposes of Regulation C, an ''extension of credit'' refers to the granting of credit pursuant to a new debt obligation. If a transaction modifies, renews, extends, or amends the terms of an existing debt obligation without satisfying and replacing the original debt obligation with a new debt obligation, the transaction generally is not an extension of credit under Regulation C.

The Bureau understands that it is interpreting the phrase ''extension of credit'' differently in § 1003.2(d) than in Regulation B, 12 CFR part 1002, which implements the Equal Credit Opportunity Act (ECOA).[106] Regulation B defines ''extension of credit'' under § 1002.2(q) to include the granting of credit in any form, including the renewal of credit and the continuance of existing credit in some circumstances. As discussed above, the Bureau generally is interpreting the phrase ''extension of credit'' in § 1003.2(d) to refer at this time only to the granting of credit pursuant to a new debt obligation. The Bureau may in the future revisit whether it is appropriate to require loan modifications to be reported under Regulation C.

Exceptions to ''extension of credit'' rule. As discussed below, comments 2(d)–2.i and .ii provide two narrow exceptions to the general rule that an ''extension of credit'' under the final rule occurs only when a new debt obligation is created. One exception addresses assumptions, which Regulation C historically has covered. The second addresses transactions completed pursuant to New York consolidation, extension, and modification agreements (New York CEMAs). As discussed below, the Bureau believes that both assumptions and transactions completed pursuant to New York CEMAs represent situations where a new debt obligation is created in substance, if not in form, and that the benefits of requiring such transactions to be reported justify the burdens.

Assumptions. The final rule adds new comment 2(d)–2.i to address Regulation C's coverage of assumptions. Under existing comment 1(c)–9, assumptions are reportable transactions. Existing comment 1(c)–9 provides that assumptions occur when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation. Existing comment 1(c)–9 also provides that assumptions are reportable as home purchase loans. The Bureau proposed to move existing comment 1(c)–9 to the commentary to the definition of home purchase loan, and the Bureau is finalizing that comment, with certain modifications, as comment 2(j)–5. See the section-by-section analysis of § 1003.2(j).

Consistent with the final rule's continued coverage of assumptions, the Bureau is adding comment 2(d)–2.i to the definition of closed-end mortgage loan to clarify that an assumption is an ''extension of credit'' under Regulation C even though the new borrower assumes an existing debt obligation. When the Board first clarified Regulation C's application to assumptions, it stated that, when an institution expressly agrees in writing with a new party to accept that party as the obligor on an existing home purchase loan, the transaction should be treated as a new home purchase loan.[107] The Bureau agrees and final comment 2(d)–2.i thus provides that assumptions are considered ''extensions of credit'' even if the new borrower assumes an existing debt obligation.

Comment 2(d)–2.i also addresses successor-in-interest transactions. A successor-in-interest transaction is a transaction in which an individual first succeeds the prior owner as the property owner and afterward seeks to take on the debt secured by the property. One industry association recommended that the Bureau exclude successor-in-interest transactions from Regulation C's definition of assumption. The comment noted that the Bureau recently published interpretive guidance under Regulation Z stating that successor-in-interest transactions are not assumptions under that regulation because the successor already owns the property when the debt is assumed.[108] The comment argued that successor-in-interest transactions should be treated the same under Regulations C and Z.

[105] These comments related to loan workout modifications. Several commenters also addressed coverage of loan consolidation, extension, and modification agreements. Those comments are discussed separately, below.

[106] 15 U.S.C. 1691 *et seq.*

[107] *See* 53 FR 31683, 31685 (Aug. 19, 1988).

[108] *See* 79 FR 41631 (July 17, 2014).

The Bureau is clarifying in comment 2(d)–2.i that successor-in-interest transactions are assumptions under Regulation C. The Bureau's interpretive guidance providing that successor-in-interest transactions are not assumptions under Regulation Z relies on Regulation Z's existing definition of assumption in § 1026.2(a)(24), which provides that the new transaction must be a residential mortgage transaction, *i.e.,* a transaction to finance the acquisition or initial construction of the dwelling being financed. Successor-in-interest transactions do not fit Regulation Z's definition because no dwelling is being acquired or constructed.[109] In contrast, Regulation C's definition of assumption requires only that a new borrower be accepted as the obligor on an existing obligation. Successor-in-interest transactions fit Regulation C's definition.[110]

Moreover, when the Bureau issued its Regulation Z interpretive guidance, it was concerned that subjecting successor-in-interest transactions to an ability-to-repay analysis could decrease the frequency of such transactions, which could harm successors inheriting homes after, for example, a family member's death. The Bureau does not believe that similar concerns apply to requiring such transactions to be reported under Regulation C. On the contrary, the Bureau believes that collecting information about successor-in-interest transactions under Regulation C will help to monitor for discrimination in such transactions. Comment 2(d)–2.i thus specifies that successor-in-interest transactions are assumptions under Regulation C. Like assumptions generally, successor-in-interest transactions represent an exception to the general rule that an ''extension of credit'' requires a new debt obligation. As noted, the Bureau believes that assumptions, including successor-in-interest transactions, represent new debt obligations in substance, if not in form, and should be reported as such.

Consolidation, Extension, and Modification Agreements

Several consumer advocacy group commenters stated that it was unclear whether the proposal covered transactions completed pursuant to modification, extension, and consolidation agreements (MECAs) or consolidation, extension, and modification agreements (CEMAs). They asked the Bureau to specify that MECAs/CEMAs are reportable transactions. As noted below, Regulation C's commentary at one time specified that MECAs/CEMAs were not reportable as refinancings, and this guidance currently exists in an FFIEC FAQ. Some uncertainty has remained, however, about the reportability of MECAs/CEMAs used for home purchase or home improvement purposes. For the reasons discussed below, the final rule clarifies that CEMAs completed pursuant to section 255 of the New York Tax Law are covered loans. Other MECA/CEMA transactions are not covered loans under the final rule.

New York CEMAs are loans secured by dwellings located in New York State. They generally are used in place of traditional refinancings, either to amend a transaction's interest rate or loan term, or to permit a borrower to take cash out. However, unlike in traditional refinancings, the existing debt obligation is not ''satisfied and replaced.'' Instead, the existing obligation is consolidated into a new loan, either by the same or a different lender, and either with or without new funds being added to the existing loan balance. Under New York State law, if no new money is added during the transaction, there is no ''new'' mortgage, and the borrower avoids paying the mortgage recording taxes that would have been imposed if a traditional refinancing had been used and the original obligation had been satisfied and replaced. If new money is part of the consolidated loan, the borrower pays mortgage recording taxes only on the new money.[111] While generally used in place of traditional refinancings, New York CEMAs also can be used for home purchases (*i.e.,* to complete an assumption), where the seller and buyer agree that the buyer will assume the seller's outstanding principal balance, and that balance is consolidated with a new loan to the borrower for the remainder of the purchase price.

A number of consumer advocacy group commenters stated that the Bureau should include MECAs/CEMAs, particularly New York CEMAs, as reportable transactions under the dwelling-secured coverage scheme. These commenters stated that New York CEMAs very often are used in lieu of traditional refinance loans, especially for larger-dollar, multifamily apartment building loans, which are central to maintaining the stock of private affordable housing complexes. The commenters argued that, without New York CEMA data, it is difficult or impossible to know where and how much credit banks are extending for such residential buildings, and whether the credit is extended on equitable terms. The commenters noted that CEMAs optionally are reported under the Community Reinvestment Act (CRA) but that CRA reporting provides less data to the public or to policymakers than if the transactions were HMDA-reportable.

These commenters also stated that HMDA reporters historically have experienced confusion about whether to report MECAs/CEMAs. Under Regulation C's traditional loan-purpose coverage scheme, the Board declined to extend coverage to MECAs/CEMAs, because the Board found that the transactions did not meet the definition of a refinancing (because the existing debt obligation was not satisfied and replaced). The Board determined that maintaining a bright-line ''satisfies and replaces'' rule for refinancings was preferable to revising the definition to a ''functional equivalent'' test that would cover MECAs/CEMAs but that also would introduce uncertainty about whether other types of transactions should be reported as refinancings.[112] Because the Board's guidance concerning MECAs/CEMAs was limited to refinancings, however, it appears that at least some financial institutions have reported MECAs/CEMAs as home improvement loans when the transactions involved new money for home improvement purposes, or as home purchase loans when the transactions were the functional equivalent of traditional assumptions.

The various consumer advocacy group commenters that addressed MECAs/CEMAs asserted that the proposal did not resolve the uncertainty that has existed about whether to report these transactions. Proposed § 1003.2(d) provided that all closed-end, dwelling-secured ''debt obligations'' were reportable transactions, and ''debt obligations'' arguably would include MECAs/CEMAs. At the same time, however, the proposal retained Regulation C's existing definition of ''refinancing,'' which arguably would continue to exclude MECAs/CEMAs from coverage or would make it unclear

[109] *See id.* at 41633 (''Although [successor-in-interest] transactions are commonly referred to as assumptions, they are not assumptions under § 1026.20(b) because the transaction is not a residential mortgage transaction as to the successor.'')

[110] Consistent with Regulation Z's interpretive guidance, however, final comment 2(j)–5 provides that successor-in-interest transactions are not home purchase loans under § 1003.2(j).

[111] *See* N.Y. Tax Law § 255 (Consol. 2015).

[112] *See* 59 FR 63698, 63702 (Dec. 9, 1994); 65 FR 78656 (Dec. 15, 2000); 67 FR 7222, 7227 (Feb. 15, 2002). In 1995, the Board adopted commentary to clarify that MECAs/CEMAs were not reportable as refinancings. 60 FR 63393 (Dec. 11, 1995). This commentary later was dropped from Regulation C inadvertently, but it was retained in an FFIEC FAQ.

how such transactions should be reported.

The Bureau concludes that having data about New York CEMAs, in particular, will improve HMDA data. These transactions are used regularly in New York in place of traditional refinancings and sometimes in place of traditional home purchase loans. New York CEMAs are used not only for multifamily dwellings, but also for single-family transactions in high-cost areas like New York City. While it is difficult to identify precisely how often New York CEMAs are used, industry professionals familiar with the New York CEMA market believe that the transactions are used on a daily basis in New York State and represent a significant percentage of the refinancings that occur in the State. Requiring reporting of New York CEMAs will improve HMDA data and also will resolve lingering confusion about how Regulation C applies to them. Finally, the change is consistent with the shift to dwelling-secured coverage for most transactions.[113]

Like assumptions, New York CEMAs represent an exception to the general rule that an ''extension of credit'' requires a new debt obligation. However, the Bureau believes that New York CEMAs represent new debt obligations in substance, if not in form, and should be reported as such. The Bureau acknowledges that, by requiring reporting of New York CEMAs, it is departing from the Board's historical guidance that such transactions need not be reported. The Bureau believes that the benefits of this departure justify the burdens both for the reasons discussed above and because the Bureau is defining the scope of transactions to be reported narrowly to encompass only those transactions that fall within the scope of New York Tax Law section 255.[114] The Bureau believes that limiting the scope of reportable MECAs/CEMAs to those covered by New York Tax Law section 255 will permit New York CEMAs to be reported while avoiding the confusion that, as the Board worried, could result from departing from a bright-line ''satisfies and replaces'' rule for the definition of refinancings generally.

After considering the comments received, the Bureau is adopting new comment 2(d)–2.ii, specifying that a transaction completed pursuant to a New York CEMA and classified as a supplemental mortgage under N.Y. Tax Law § 255, such that the borrower owed reduced or no mortgage recording taxes, is an extension of credit under § 1003.2(d). To avoid any implication that other types of loan modifications or extensions must be reported, the commentary language is narrowly tailored to require reporting only of transactions completed pursuant to this specific provision of New York law. *See* the section-by-section analysis of § 1003.2(i), (j), and (p) for details about whether a New York CEMA is a home improvement loan, a home purchase loan, or a refinancing.

2(e) Covered Loan

HMDA requires financial institutions to collect and report information about ''mortgage loans,'' which HMDA section 303(2) defines as loans secured by residential real property or home improvement loans. When the Board adopted Regulation C, it implemented this requirement by mandating that financial institutions report information about applications and closed-end loans made for one of three purposes: Home improvement, home purchase, or refinancing.[115] As noted, under existing Regulation C, closed-end home purchase loans and refinancings must be reported if they are dwelling-secured, and closed-end home improvement loans must be reported whether or not they are dwelling-secured.[116] For transactions that meet one of the three purposes, reporting of closed-end loans is mandatory and reporting of home-equity lines of credit is optional.[117] Under existing Regulation C, reverse mortgages are subject to these same criteria for reporting: A closed-end reverse mortgage must be reported if it is for one of the three purposes; a reverse mortgage that is an open-end line of credit is optionally reported.

To simplify Regulation C's transactional coverage test and to expand the types of transactions reported, the Bureau proposed to require financial institutions to report applications for, and originations and purchases of, all dwelling-secured loans and lines of credit. The Bureau also proposed to add the defined term ''covered loan'' in § 1003.2(e). The term referred to all transactions reportable under the proposed dwelling-secured coverage scheme: Closed-end mortgage loans under proposed § 1003.2(d), open-end lines of credit under proposed § 1003.2(o), and reverse mortgages under proposed § 1003.2(q). The term provided a shorthand phrase that HMDA reporters and data users could use to refer to any transaction reportable under Regulation C. For the reasons discussed below, the Bureau is finalizing in § 1003.2(e) the defined term ''covered loan'' and the shift to dwelling-secured coverage largely as proposed for consumer-purpose loans and lines of credit. The Bureau is retaining Regulation C's existing purpose-based test for commercial-purpose loans and lines of credit.

Only a few commenters specifically addressed the Bureau's proposal to add the defined term ''covered loan'' to Regulation C to refer to all covered transactions, and the commenters generally favored the proposal. They believed that having a standard shorthand for all covered transactions would facilitate compliance. The Bureau is finalizing § 1003.2(e) ''covered loan'' to define the universe of transactions covered under Regulation C.

A large number of commenters addressed the proposed shift from purpose-based to collateral-based transactional coverage, with consumer advocacy group commenters supporting the shift and industry commenters expressing mixed views.[118] Some consumer advocacy groups stated that having information about all loans secured by residential property would

[113] The Bureau understands that MECAs/CEMAs may be used in States other than New York. However, based on the comments received and the Bureau's own research, it appears that CEMAs are particularly common in New York State. As noted elsewhere in this section-by-section analysis, the Bureau understands that, by requiring reporting of New York CEMAs, it is departing from the Board's historical guidance on this topic. The Bureau believes that such a departure is warranted based on the apparent frequency with which such transactions are used. Like the Board, however, the Bureau believes that the benefits of modifying the overall ''satisfies and replaces'' standard for refinancings to capture MECAs/CEMAs do not justify the burdens of such a change. Therefore, the Bureau is incorporating New York CEMAs into the final rule by referencing the specific provision of the New York Tax Code that permits them. If the Bureau becomes aware of CEMAs/MECAs being completed in significant numbers in other States, the Bureau may evaluate whether it would be practicable to require them to be reported in a similar manner.

[114] Under the final rule, MECAs/CEMAs completed in States other than New York are not reported, regardless of whether they are used for home purchase, home improvement, or refinancing purposes, and regardless of whether new money is extended as part of the transaction.

[115] 41 FR 23931, 23932 (June 14, 1976).

[116] *See* the section-by-section analysis of § 1003.2(d), (f), (i).

[117] Specifically, under existing § 1003.4(c)(3), financial institutions optionally may report home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase.

[118] This section-by-section analysis provides a high-level discussion of comments concerning the proposed shift to dwelling-secured coverage. *See* the section-by-section analyses of § 1003.2(d), (i), (o), (q) and of § 1003.3(c)(10) for specific comments concerning closed-end mortgage loans, home improvement loans, open-end lines of credit, reverse mortgages, and commercial-purpose transactions, respectively.

improve the usefulness and quality of HMDA data. Others stated that having data about all such loans would be valuable in assessing whether financial institutions are providing the neighborhoods that the consumer advocacy groups serve with the full range of credit the neighborhoods need. One consumer advocacy commenter asserted that financial institutions should report any transaction that could result in a borrower losing his or her home. Another stated that removing the subjectivity from determining whether to report a loan would ease burden for financial institutions, and that having information about more loans would improve HMDA's usefulness. The commenter noted that consumer mortgage lending products evolve rapidly, and there is no principled reason to require reporting of some but not others.

Industry commenters and a group of State regulators expressed mixed views about the proposed shift to dwelling-secured coverage. A small number of industry commenters supported the proposal unconditionally because they believed that it would ease burden. These commenters, who generally were smaller financial institutions and compliance consultants, stated that deciding which loans meet the current purpose test is confusing. They stated that a simplified transactional coverage test would stop the erroneous over-reporting of loans that has occurred despite financial institutions' best efforts,[119] and that the benefits of a streamlined test justified the burdens of more reporting. One industry commenter appreciated the fact that HMDA would provide a more comprehensive view of mortgage transactions across the country. A group of State regulators supported dwelling-secured coverage for consumer-purpose transactions only.

The majority of industry commenters that addressed transactional coverage opposed the proposed shift to dwelling-secured coverage, supported it only for consumer-purpose transactions or for closed-end mortgage loans, or supported it only to the extent that it would eliminate reporting of home improvement loans not secured by a dwelling. Numerous industry commenters generally objected to the overall compliance burdens and costs of reporting additional transactions, particularly in light of the Bureau's proposal simultaneously to expand the data reported about each transaction and to lower (for some institutions) the institutional coverage threshold.[120] One government agency commenter expressed concern that the revisions to transactional coverage would burden small financial institutions and urged the Bureau not to adopt the proposed changes. Some industry commenters generally asserted that their reportable transaction volume would increase significantly,[121] that they would not be able to comply without hiring additional staff, and that compliance costs would be passed to consumers. Others generally argued that the Bureau should keep Regulation C's existing purpose-based coverage because it serves HMDA's purposes better than a collateral-based scheme. Most industry commenters that opposed the proposed shift, however, specifically objected to the burdens of reporting all home-equity lines of credit and all dwelling-secured commercial-purpose loans and lines of credit.

As explained in the section-by-section analyses of § 1003.2(d) and (o), the Bureau is finalizing the shift to dwelling-secured coverage for closed- and open-end consumer-purpose transactions, with some modifications to ease burden for open-end reporting. After considering the comments received, and as discussed fully in the section-by-section analyses of those sections, the Bureau believes that the benefits of expanded reporting justify the burdens. As discussed in the section-by-section of § 1003.3(c)(10), however, the Bureau is maintaining Regulation C's existing purpose-based coverage test for commercial-purpose transactions.

2(f) Dwelling

The Bureau proposed to revise the definition of dwelling in § 1003.2 by moving the geographic location requirement currently in the definition of dwelling to § 1003.1(c), to add additional examples of dwellings to the definition and commentary, and to revise the commentary to exclude certain structures from the definition of dwelling. A few commenters supported the proposed changes to the definition of dwelling, while others argued that certain types of structures should be included or excluded from the definition. For the reasons discussed below, the Bureau is finalizing § 1003.2(f) with minor technical revisions to the definition and with additional revisions to the commentary discussed in detail below. The definition is revised to clarify that multifamily residential structures include complexes and manufactured home communities.

Some commenters argued that second homes and investment properties should no longer be covered by Regulation C and that only primary residences should be reported because second homes and investment properties do not relate to housing needs in the same way that primary residences do. HMDA section 303(2) defines a mortgage loan, in part, as one secured by ''residential real property'' and HMDA section 304(b)(2) requires collection of information regarding ''mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan.'' The Bureau believes that second homes as well as investment properties are within the scope of information required by HMDA and should continue to be covered by Regulation C. The Bureau is therefore finalizing comment 2(f)–1 generally as proposed, with certain material from proposed comment 2(f)–1 incorporated into comment 2(f)–2 as discussed below.

Some commenters argued that all multifamily properties should be excluded from Regulation C. The Bureau believes that multifamily residential structures should continue to be included within Regulation C because they provide for housing needs and because, as the Bureau noted in the proposal, HMDA data highlight the importance of multifamily lending to the recovering housing finance market and to consumers.[122]

Many commenters addressed multifamily loan reporting in more specific ways. Some commenters supported the proposal's coverage of manufactured home community loans and other aspects related to multifamily lending. Others requested guidance on reporting multifamily transactions. Some commenters argued that certain types of multifamily lending should be excluded from Regulation C. The Bureau is adopting new comment 2(f)–2 dealing specifically with multifamily residential structures and communities,

[119] These commenters seemed to be concerned about erroneously classifying consumer-purpose transactions as HMDA-reportable and, in turn, unnecessarily collecting race, sex, and ethnicity data from applicants and borrowers.

[120] A number of commenters argued that, in light of the Bureau's proposal to expand transactional coverage, the Bureau should modify its institutional coverage threshold proposal. Those comments are discussed in the section-by-section analysis of § 1003.2(g).

[121] Many commenters discussed the overall increase in reporting from a shift to dwelling-secured coverage. Others estimated only the increase from particular categories of transactions, such as home-equity lines of credit or commercial-purpose transactions. Those estimates are discussed in the section-by-section analyses of § 1003.2(o) and of § 1003.3(c)(10).

[122] 79 FR 51731, 51800 (Aug. 29, 2014); San Francisco Hearing, *supra* note 42.

which incorporates certain material from proposed comment 2(f)–1 and additional material in response to comments. The Bureau believes that providing a specific comment relating to multifamily residential structures will facilitate compliance by providing guidance on when loans related to multifamily dwellings would be considered loans secured by a dwelling for purposes of Regulation C. The comment provides that a manufactured home community is a dwelling for purposes of Regulation C regardless of whether any individual manufactured homes also secure the loan. The comment also provides examples of loans related to certain multifamily structures that would nevertheless not be secured by a dwelling for purposes of Regulation C, and would therefore not be reportable, such as loans secured only by an assignment of rents or dues or only by common areas and not individual dwelling units.

The Bureau is adopting new comment 2(f)–3 relating to exclusions from the definition of dwelling (incorporating material from proposed comment 2(f)–2) and clarifying that recreational vehicle parks are excluded from the definition of dwelling for purposes of Regulation C. Several commenters agreed with the proposed exclusions for recreational vehicles, houseboats, mobile homes constructed prior to June 15, 1976 (pre-1976 mobile homes),[123] and other types of structures.

Regarding the exclusion of recreational vehicles, the Bureau agrees with the commenters that supported the proposed clarification that recreational vehicles are not dwellings for purposes of Regulation C, regardless of whether they are used as residences. As noted in the proposal, the Bureau believes that making this exclusion explicit will provide more clarity on what structures qualify as dwellings and reduce burden on financial institutions. The Bureau also believes it will improve the consistency of reported HMDA data. Clarifying that recreational vehicle parks are excluded from the definition of dwelling for purposes of Regulation C is consistent with the exclusion of recreational vehicles. The Bureau believes that, as discussed above, while manufactured home communities should be included in the definition of dwelling for purposes of Regulation C, including recreational vehicle parks would not be appropriate given that they are not frequently intended as long-term housing.

Some commenters stated that the proposed exclusion of pre-1976 mobile homes would create compliance problems because the financial institution could mistakenly collect race, ethnicity, and sex information before knowing whether the home was a manufactured home and therefore violate Regulation B. The Bureau believes that this concern is unlikely to result in ECOA violations because Regulation B would still require collection of demographic information on some pre-1976 mobile home lending.[124] Other commenters argued that pre-1976 mobile home lending should be reported under Regulation C because of consumer protection and housing needs concerns related to this type of housing. The Bureau does not believe this concern justifies the additional burden of requiring financial institutions to report these loans and identify them distinctly from manufactured home loans, especially given that the amount of lending secured by this type of collateral will continue to decrease as time passes. Therefore, the Bureau is finalizing the exclusion of pre-1976 mobile homes as part of comment 2(f)–3. Clarifying that recreational vehicle parks are excluded from the definition of dwelling for purposes of Regulation C is consistent with the exclusion of recreational vehicles.[125] The Bureau believes that, as discussed above, while manufactured home communities should be included in the definition of dwelling for purposes of Regulation C, including recreational vehicle parks would not be appropriate given that they are not frequently intended as long term housing.

The Bureau proposed a special rule for mixed-use properties that contained five or more individual dwelling units. The Bureau proposed that such a property always be considered to have a primary residential use and therefore report a covered loan secured by it. A few commenters supported the proposal to report all residential structures with five or more individual dwelling units, but most commenters who addressed mixed-use property argued that this was overbroad and that the current primary use rules should apply to multifamily residential structures as well. The Bureau is revising comment 2(f)–3 relating to mixed-use properties and finalizing it as comment 2(f)–4 by removing the sentence requiring that financial institutions always treat residential structures with five or more individual dwelling units as having a primary residential purpose. Requiring financial institutions to report mixed-use multifamily properties in all circumstances would result in reporting of multifamily properties with relatively small housing components and large commercial components. Data users could not differentiate between those properties and multifamily properties with larger housing components, which would decrease the data's usefulness. Thus retaining the existing discretion for financial institutions to determine the primary use for multifamily properties is appropriate.

The Bureau is adopting new comment 2(f)–5 relating to properties with medical and service components. Some commenters requested guidance on when properties such as retirement homes, assisted living, and nursing homes should be reported under Regulation C. Other commenters requested exclusions for all properties that provide any service or medical care component. The Bureau does not believe it is appropriate to exclude all such properties. Information about loans secured by properties that provide long-term housing and that are not transitory or primarily medical in nature provides valuable information on how financial institutions are serving the housing needs of their communities. The comment provides that properties that provide long-term housing with related services are reportable under Regulation C, while properties that provide medical care are not, consistent with the exclusion of hospitals in comment 2(f)–3. The comment also clarifies that such properties are reportable when they combine long-term housing and related services with a medical care component. The comment will facilitate compliance by expanding on earlier guidance provided by the Board.[126] Section 1003.2(f) is being adopted to implement, in part, the definition of ''mortgage loan'' in HMDA section 303(2). That term would be implemented through other terms in Regulation C as well, including the definitions of ''closed-end mortgage loan'' and ''covered loan.'' In combination with other relevant provisions in Regulation C, the Bureau

[123] The HUD standards for manufactured homes do not cover mobile homes constructed before June 15, 1976. 24 CFR 3282.8(a). 79 FR 51731, 51749 (Aug. 29, 2014).

[124] 12 CFR 1002.13(a)(2).

[125] As discussed in the proposal, the final rule's definition of dwelling would differ from Regulation Z's definition of dwelling with respect to some recreational vehicles, because Regulation Z treats recreational vehicles used as residences as dwellings. 12 CFR part 1026, comment 2(a)(19)–2. 79 FR 51731, 51749 (Aug. 29, 2014).

[126] 60 FR 63393, 63395 (Dec. 11, 1995). Fed. Reserve Bank of St. Louis, CRA/HMDA Reporter, *Census 2000 and CRA/HMDA Data Collection,* (Sept. 2000), *available at http://www.ffiec.gov/hmda/pdf/00news.pdf.*

believes that the proposed definition of ''dwelling'' is a reasonable interpretation of the definition in that provision. Section 1003.2(f) is also adopted pursuant to the Bureau's authority under section 305(a) of HMDA. Pursuant to section 305(a) of HMDA, the Bureau believes that this proposed definition is necessary and proper to effectuate the purposes of HMDA. The definition will serve HMDA's purpose of providing information to help determine whether financial institutions are serving the housing needs of their communities by providing information about various types of housing that are financed by financial institutions. The definition will facilitate compliance with HMDA requirements by providing clarity regarding what transactions must be reported for purposes of Regulation C.

2(g) Financial Institution

Regulation C requires institutions that meet the definition of financial institution to collect and report HMDA data. HMDA and current Regulation C establish different coverage criteria for depository institutions (banks, savings associations, and credit unions) than for nondepository institutions (for-profit mortgage-lending institutions other than banks, savings associations, or credit unions).[127] Under the current definition, depository institutions that originate one first-lien home purchase loan or refinancing secured by a one- to four-unit dwelling and that meet other criteria for ''financial institution'' must collect and report HMDA data, while certain nondepository institutions that originate many more mortgage loans annually do not have to collect and report HMDA data.

The Bureau proposed to adjust Regulation C's institutional coverage to adopt a uniform loan-volume threshold of 25 loans applicable to all financial institutions. Under the proposal, depository institutions and nondepository institutions that meet all of the other criteria for a ''financial institution'' would be required to report HMDA data if they originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year.

For the reasons discussed below, the Bureau is finalizing changes to Regulation C's institutional coverage and adopting uniform loan-volume thresholds for depository and nondepository institutions. The loan-volume thresholds require an institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, provided that the institution meets all of the other criteria for institutional coverage.

The final rule's changes to institutional coverage will provide several important benefits. First, the coverage test will improve the availability of data concerning the practices of nondepository institutions. The expanded coverage of nondepository institutions will ensure more equal visibility into the practices of nondepository institutions and depository institutions. With expanded HMDA data about nondepository lending, the public and public officials will be better able to protect consumers because historically, some riskier lending practices, such as those that led to the financial crisis, have emerged from the nondepository market sector.[128]

Second, a significant number of lower-volume depository institutions will no longer be required to report HMDA data under the revised coverage test, which will eliminate those institutions' compliance costs. At the same time, the coverage test will preserve sufficient data for analyzing mortgage lending at the national, local, and institutional levels.

Third, the coverage test, by considering both an institution's closed-end and open-end origination volumes, will support the goal of increasing visibility into open-end dwelling-secured lending. This change to institutional coverage, along with the change to transactional coverage discussed in the section-by-section analysis of § 1003.2(o), will improve the public and public officials' ability to understand whether, and how, financial institutions are using open-end lines of credit to serve the housing needs of their communities. Incorporating open-end lending into the institutional coverage test will not require financial institutions that originate a small number of closed-end mortgage loans or open-end lines of credit to report those loans. As discussed below in the section-by-section analysis of § 1003.3(c)(11) and (12), the final rule also includes transactional thresholds. The transactional thresholds ensure that financial institutions that meet only the 25 closed-end mortgage loan threshold are not required to report their open-end lending, and that financial institutions that meet only the 100 open-end line of credit threshold are not required to report their closed-end lending.

Finally, by considering two years of lending for coverage, the final rule will provide stability in reporting obligations for institutions. Accordingly, a financial institution that does not meet the loan-volume thresholds established in the final rule and that has an unexpected and unusually high loan-origination volume in one year will not be required to report HMDA data unless it maintains that level of lending for two consecutive years. The specific changes to the definition of financial institution applicable to nondepository institutions and depository institutions are discussed below separately.

The Bureau also proposed technical modifications to the commentary to the definition of financial institution. The Bureau received no comments on the proposed comments 2(g)–1 or –3 through –6, and is finalizing the commentary as proposed and with technical modifications to conform to definition of financial institution included in the final rule. The Bureau is also renumbering proposed comments 2(g)–3 through –6 as comments 2(g)–4 through –7. The Bureau is also adopting new comment 2(g)–3 to address how to determine whether an institution satisfies the definition of financial institution after a merger or acquisition.

For ease of publication, the Bureau is reserving comment 2(g)–2, which sets forth the asset-size adjustment for depository financial institutions for each calendar year. The Bureau updates comment 2(g)–2 annually to make the adjustments to the level of the asset-size exemption for depository financial institutions required by HMDA section 309(b). The reserved comment will be replaced when the asset-size adjustment for the 2018 calendar year is published.

2(g)(1) Depository Financial Institutions

HMDA extends reporting responsibilities to depository institutions (banks, savings associations, and credit unions) that satisfy certain location, asset-size, and federally related requirements.[129] Regulation C implements HMDA's coverage criteria in the definition of financial institution in § 1003.2. Under the current definition of financial institution in § 1003.2, a bank, savings association, or credit union meets the definition of financial institution if it satisfies all of the following criteria: (1) On the preceding December 31, it had assets of at least $44 million;[130] (2) on the preceding December 31, it had a home or branch office in a Metropolitan Statistical Area (MSA); (3) during the previous calendar

[127] HMDA sections 303(3) and 309(a); Regulation C § 1003.2 (definition of financial institution).

[128] See the section-by-section analysis of § 1003.2(g)(ii) below for complete discussion.

[129] 12 U.S.C. 2802(3).

[130] Comment Financial institution-2 to § 1003.2.

year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on a one- to four-unit dwelling; and (4) the institution is federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.[131]

Proposed § 1003.2(g)(1) modified the definition of financial institution by defining a new term, depository financial institution, and adding a loan-volume threshold to the coverage criteria for depository institutions. The proposed loan-volume threshold would require reporting only by depository institutions that met the current criteria in § 1003.2 and that originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year.

The Bureau received a large number of comments on proposed § 1003.2(g)(1). Industry commenters generally supported eliminating the requirement to report from low-volume depository institutions, but urged the Bureau to exclude more institutions from the requirement to report HMDA data. Consumer advocate commenters generally opposed decreasing Regulation C's depository institution coverage.

The Bureau is adopting § 1003.2(g)(1), which defines depository financial institution, to include banks, savings associations, and credit unions, that meet the current criteria to be considered a financial institution,[132] and originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years. The Bureau is finalizing the proposed exclusion of depository institutions that originate fewer than 25 closed-end mortgage loans. In addition, the final rule also requires lenders that meet the other criteria and that originate at least 100 open-end lines of credit to report HMDA data, even if those institutions did not originate at least 25 closed-end mortgage loans. The final rule includes a two-year look-back period for the loan-volume threshold. Each of these aspects of the final rule is discussed below separately.

Loan-Volume Threshold for Closed-End Mortgage Loans

The Bureau received many comments on proposed § 1003.2(g)(1). Industry commenters generally supported adopting a loan-volume threshold that would eliminate reporting by low-volume depository institutions,[133] but urged the Bureau to adopt a much higher loan-volume threshold that would exempt more depository institutions from reporting. Industry commenters stated that low-volume depository institutions lack resources and sophistication and that their data have limited value. Industry commenters argued that a higher loan-volume threshold would not impact the availability of data for analysis at the national level or the ability to analyze lending at an institutional level. The commenters also advocated a consistent approach between the loan-volume threshold in Regulation C and the small creditor and small servicer definitions in the Bureau's title XIV Rules.[134]

On the other hand, several community advocate commenters expressed strong opposition to decreasing Regulation C's coverage of depository institutions. Most noted that the depository institutions that would be excluded are currently reporting, and therefore are accustomed to reporting. Many also highlighted the importance of the data reported by the depository institutions that would be excluded at the community level, especially in rural and underserved areas or to low- and moderate-income (LMI) individuals and minorities. Commenters provided examples of reports and programs that rely on HMDA data at the census tract level.

Other community advocate commenters expressed support for the proposed loan-volume threshold, but noted concerns about the loss of data that may result if the Bureau adopted a loan-volume threshold greater than 25 loans. They highlighted concerns about the loss of data on particular types of transactions, such as applications submitted by African Americans, loans related to multifamily properties, and loans related to manufactured housing.

The Bureau believes that Regulation C's institutional coverage criteria should balance the burden on financial institutions with the value of the data reported. Depository institutions that are currently reporting should not bear the burden of reporting under Regulation C if their data are of limited value in the HMDA data set. At the same time, Regulation C's institutional coverage criteria should not impair HMDA's ability to achieve its purposes.

Higher closed-end mortgage loan-volume thresholds, as suggested by industry, might not significantly impact the value of HMDA data for analysis at the national level. For example, it is possible to maintain reporting of a significant percentage of the national mortgage market with a closed-end mortgage loan-volume threshold higher than 25 loans annually. In addition, it may also be true that data reported by some institutions that satisfy the proposed 25-loan-volume threshold may not be as useful for statistical analysis as data reported by institutions with much higher loan volumes.

However, the higher closed-end mortgage loan-volume thresholds suggested by industry commenters would have a material negative impact on the availability of data about patterns and trends at the local level. Data about local communities is essential to achieve HMDA's three purposes, which are to provide the public and public officials with sufficient information: (1) To determine whether institutions are meeting their obligations to serve the housing needs of the communities in which they are located; (2) to identify communities in need of targeted public and private investment; and (3) to assist in identifying discriminatory lending patterns and enforcing antidiscrimination statutes.[135] Public officials, community advocates, and researchers rely on HMDA data to analyze access to credit at the neighborhood level and to target programs to assist underserved communities and consumers.

Local and State officials have used HMDA data to identify and target relief to localities impacted by high-cost lending or discrimination. For example, policy makers in Lowell, Massachusetts identified a need for homebuyer counseling and education in Lowell, based on HMDA data, which showed a high percentage of high-cost loans

[131] Section 1003.2(financial institution)(1).

[132] Under § 1003.2, a bank, savings association, or credit union meets the definition of financial institution if it satisfies all of the following criteria: (1) On the preceding December 31, it had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the Act; (2) on the preceding December 31, it had a home or branch office in a MSA; (3) during the previous calendar year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on a one- to four-unit dwelling; and (4) the institution is federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

[133] Participants in the Board's 2010 Hearings also urged the Board to eliminate reporting by lower-volume depository institutions. *See, e.g.,* Atlanta Hearing, *supra* note 40, (remarks of Phil Greer, Senior Vice President of Loan Administration, State Employees Credit Union) (noting that the burden of reporting only one loan would be low, but that the data reported would not provide ''meaningful information'').

[134] 12 CFR 1026.35(b)(2)(iii)(B) (describing small creditor thresholds); 12 CFR 1026.41(e)(4) (defining small servicer).

[135] Section 1003.1(b).

compared to surrounding communities.[136] Similarly, in 2008 the City of Albuquerque used HMDA data to characterize neighborhoods as ''stable,'' ''prone to gentrification,'' or ''prone to disinvestment'' for purposes of determining the most effective use of housing grants.[137] As another example, Antioch, California, monitors HMDA data, reviews it when selecting financial institutions for contracts and participation in local programs, and supports home purchase programs targeted to households purchasing homes in census tracts with low origination rates.[138] In addition, the City of Flint Michigan, in collaboration with the Center for Community Progress, used HMDA data to identify neighborhoods in Flint to target for a blight eradication program.[139] Similarly, HMDA data helped bring to light discriminatory lending patterns in Chicago neighborhoods, resulting in a large discriminatory lending settlement.[140] Researchers and consumer advocates also analyze HMDA data at the census tract level to identify patterns of discrimination at the national level.[141]

Any loan-volume threshold will affect individual markets differently, depending on the extent to which individual markets are served by smaller creditors and the market share of those creditors. The Bureau believes that a 25-closed-end mortgage loan-volume threshold would impact the robustness of the data that would remain available only in a relatively small number of markets. For example, only about 45 census tracts would lose over 20 percent of currently reported data if a 25 closed-end mortgage loan-volume threshold is used to trigger reporting.[142] In contrast, the higher closed-end mortgage loan-volume thresholds requested by industry commenters would have a negative impact on data about more communities and consumers. For example, at a closed-end mortgage loan-volume threshold set at 100, the number of census tracts that would lose 20 percent of reported data would increase from about 45 tracts to about 385 tracts, almost eight times more than the number with a threshold set at 25 closed-end mortgage loans.[143] The number of affected lower-middle income tracts would increase from about 20 tracts to about 145 tracts, an increase of over six times over the number at the 25-loan level.[144] The Bureau believes that the loss of data in communities at closed-end mortgage loan-volume thresholds higher than 25 would substantially impede the public's and public officials' ability to understand access to credit in their communities.

In addition, the Bureau does not believe that it should set the closed-end mortgage loan-volume threshold at the levels in the small creditor and small servicer definitions in the Bureau's title XIV rules.[145] While the Bureau's title XIV rules and Regulation C may apply to some of the same institutions and transactions, Regulation C and the Bureau's title XIV rules have different objectives. HMDA aims to provide specific data to the public and public officials. For example, HMDA aims to provide sufficient information to the public and public officials to identify whether the housing needs of their communities are being served by the existing financial institutions. In contrast, the title XIV rule thresholds are designed to balance consumer protection and compliance burden in the context of very specific lending practices. As discussed above, an institutional coverage threshold at the levels of the small creditor and small servicer thresholds, which include thresholds of 2,000 and 5,000 loans, respectively,[146] would undermine both the utility of HMDA data for analysis at the local level and the benefits that HMDA provides to communities.

Finally, the Bureau believes that eliminating the requirement to report by institutions that originated fewer than 25 closed-end mortgage loans annually would meaningfully reduce burden. As discussed in part VII below, the proposed loan-volume threshold would relieve about 22 percent of depository institutions that are currently reporting of the obligation to report HMDA data on closed-end mortgage loans.

For the reasons discussed above, the Bureau is adopting a loan-volume threshold for depository institutions that will require reporting by depository institutions that originate at least 25 closed-end mortgage loans annually and meet the other applicable criteria in § 1003.2(g)(1).

The Bureau, as discussed below in part VI, believes that the 25 closed-end loan-volume threshold for depository institutions should go into effect on January 1, 2017, one year earlier than the effective date for most of the remaining rule. To effectuate this earlier effective date, the Bureau is amending the definition of ''financial institution'' in § 1003.2.

Loan-Volume Threshold for Open-End Lines of Credit

The loan-volume threshold provided in proposed § 1003.2(g)(1)(v) excluded open-end lines of credit from the loans that would count toward the threshold.[147] The Bureau solicited feedback on what types of loans should count toward the proposed loan-volume threshold and, in particular, whether open-end lines of credit should count toward the proposed loan-volume threshold. The final rule incorporates an institution's origination of open-end lines of credit into HMDA's institutional coverage criteria. Under the final rule, a financial institution will be required to

[136] *See* City of Lawrence, Massachusetts, *HUD Consolidated Plan 2010–2015,* at 68 (2010), *available at http://www.cityoflawrence.com/Data/Sites/1/documents/cd/Lawrence_Consolidated_Plan_Final.pdf.*

[137] *See* City of Albuquerque, *Five Year Consolidated Plan and Workforce Housing Plan,* at 100 (2008), *available at http://www.cabq.gov/family/documents/ConsolidatedWorkforceHousingPlan20082012final.pdf.*

[138] *See* City of Antioch, California, *Fiscal Year 2012–2013 Action Plan,* at 29 (2012), *available at http://www.ci.antioch.ca.us/CitySvcs/CDBGdocs/Action%20Plan%20FY12-13.pdf.*

[139] Luke Telander, *Flint's Framework for the Future,* Ctr. for Cmty. Progress, Cmty. Progress Blog (July 1, 2014), *http://www.communityprogress.net/blog/flints-framework-future.*

[140] *See, e.g.,* Yana Kunichoff, *Lisa Madigan Credits Reporter with Initiating Largest Discriminatory Lending Settlements in U.S. History,* Chicago Muckrakers Blog (June 14, 2013, 2:53 p.m.), *http://www.chicagonow.com/chicago-muckrakers/2013/06/lisa-madigan-credits-reporter-with-initiating-largest-discriminatory-lending-settlements-in-u-s-history/* (''During our ongoing litigation . . . the Chicago Reporter study looking at the HMDA data for the City of Chicago came out. . . . It was such a startling statistic that I said . . . we have to investigate, we have to find out if this is true. . . . We did an analysis of that data that substantiated what the Reporter had already found. . . . [W]e ultimately resolved those two lawsuits. They are the largest fair-lending settlements in our nation's history.'').

[141] *See, e.g.,* California Reinvestment Coalition, *et al, Paying More for the American Dream VI: Racial Disparities in FHA/VA Lending* (2012), *available at http://www.woodstockinst.org/sites/default/files/attachments/payingmoreVI_multistate_july2012_0.pdf*; Samantha Friedman & Gregory D. Squires, *Does the Community Reinvestment Act Help Minorities Access Traditionally Inaccessible Neighborhoods?,* 52 Social Problems 209 (2005).

[142] As discussed in part VII below, the Bureau derived these estimates using 2013 HMDA data.

[143] *Id.*

[144] As discussed in part VII below, the Bureau prepared these estimates using 2013 HMDA data and 2012 Community Reinvestment Act data.

[145] 12 CFR 1026.35(b)(2)(iii)(B) (describing small creditor thresholds); 12 CFR 1026.41(e)(4) (defining small servicer).

[146] *Id.* The Bureau recently increased the small creditor threshold to 2,000 applicable loans annually. *See* 80 FR 59943 (Oct. 2, 2015).

[147] Under the proposed loan-volume threshold, the definition of open-end line of credit did not include open-end reverse mortgages. As a result, neither open-end nor closed-end reverse mortgages were excluded from the proposed loan-volume threshold. The definitions of closed-end mortgage loan and open-end line of credit included in the final rule include closed-end and open-end reverse mortgages, respectively, as discussed in the section-by-section analysis of § 1003.2(d) and (o).

report HMDA data on open-end lines of credit if it meets the other applicable criteria and originated at least 100 open-end lines of credit in each of the two preceding calendar years.[148]

Relatively few commenters provided feedback on this issue. Some industry commenters stated that they supported the proposed exclusion of open-end lines of credit from the loans that count toward the loan-volume threshold. These commenters also suggested excluding other types of loans from the loans that count toward the threshold, including commercial loans, home-equity loans, and reverse mortgages. On the other hand, some industry commenters and a community advocate commenter stated that open-end lines of credit should count toward the loan-volume threshold. They explained that this would prevent institutions from steering consumers to open-end lines of credit to avoid being required to report HMDA data.

The Bureau is not finalizing the proposed exclusion of open-end lines of credit from Regulation C's institutional coverage criteria for the reasons discussed below. As noted above, the Bureau believes that Regulation C's institutional coverage criteria should balance the burden on financial institutions with the value of the data reported. Depository institutions that are currently reporting should not bear the burden of reporting under Regulation C if their data are of limited value in the HMDA data set. At the same time, Regulation C's institutional coverage criteria should support HMDA's purposes. The Bureau has determined that the exclusion of open-end lines of credit from Regulation C's institutional coverage criteria would not appropriately balance those considerations.

As discussed in the section-by-section analysis of § 1003.2(o), the Bureau is finalizing the proposed expansion of the transactions reported in HMDA to include dwelling-secured, consumer-purpose open-end lines of credit, unless an exclusion applies.[149] Data about such transactions are not currently publicly available and, as discussed in the section-by-analysis of § 1003.2(o), the Bureau believes that having data about them will improve the understanding of how financial institutions are serving the housing needs of their communities and assist in the distribution of public sector investments. Like closed-end home-equity loans and refinancings, both of which are subject to broad coverage under the final rule, dwelling-secured credit lines may be used for home purchase, home improvement, and other purposes. Regardless of how they are used, they liquefy equity that borrowers have built up in their homes, which often are their most important assets. Borrowers who take out dwelling-secured credit lines increase their risk of losing their homes to foreclosure when property values decline, and in fact, the expansion of open-end line of credit originations in the mid-2000s contributed to the foreclosure crises that many communities experienced in the late 2000s.[150] Had open-end line of credit data been reported in HMDA, the public and public officials could have had a much earlier warning and a better understanding of potential risks, and public and private mortgage relief programs could have better assisted distressed borrowers in the aftermath of the crisis. As discussed in the section-by-section analysis of § 1003.2(o), dwelling-secured open-end lending is again on the rise now that the mortgage market has begun to recover from the crisis. The Bureau believes that it is important to improve visibility into this key segment of the mortgage market for all of the reasons discussed here and in the section-by-section analysis of § 1003.2(o).

By excluding open-end lines of credit from the loan-volume threshold, the proposed coverage test would not support that goal. Under the proposed institutional coverage test, institutions that originate large numbers of open-end lines of credit, but fewer than 25 closed-end mortgage loans, would not be required to report HMDA data on any of their loans. The proposed test may, therefore, exclude institutions with significant open-end lending, whose data may provide valuable insights into the open-end dwelling-secured market. The proposed test may also create an incentive for institutions to change their business practices to avoid reporting open-end data (*e.g.,* by transferring all open-end lending to a separate subsidiary). This result would undermine the goals articulated in the section-by-section analysis of § 1003.2(o) to increase visibility into open-end dwelling-secured lending.

In addition to possibly excluding high volume open-end lenders, the proposed test may also burden some institutions with low open-end origination volumes with the requirement to report data concerning their open-end lending. The proposed institutional coverage test would require institutions with sufficient closed-end—but very little open-end—mortgage lending to incur costs to begin open-end reporting. As discussed in the section-by-section analysis of § 1003.2(o) below, commencing reporting of open-end lines of credit, unlike continuing to report closed-end mortgage loans, represents a new, and in some cases significant, compliance burden. The proposal would have imposed these costs on small institutions with limited open-end lending, where the benefits of reporting the data do not justify the costs of reporting.

In light of these considerations and those discussed in the section-by-section analysis of § 1003.2(o), the Bureau concludes that only institutions that originate at least 100 open-end lines of credit in each of the two preceding calendar years should report HMDA data concerning open-end lines of credit. Accordingly, the Bureau is adopting a separate, open-end loan-volume threshold to determine whether an institution satisfies the definition of financial institution. The Bureau is also adopting transactional coverage thresholds, discussed below in the section-by-section analysis of § 1003.3(c)(11) and (12). The institutional and transactional coverage thresholds are designed to operate in tandem. Under these thresholds, a financial institution will report closed-end mortgage loans only if it satisfies the closed-end mortgage threshold and will report open-end lines of credit only if it satisfies the separate open-end line credit threshold.

The Bureau believes that adopting a 100-open-end line of credit threshold will avoid imposing the burden of establishing open-end reporting on many small institutions with low open-end lending volumes. Specifically, the Bureau estimates that almost 3,400 predominately smaller-sized institutions, that would have been required to begin open-end reporting under the proposal will not be required to report open-end data under the final rule.[151] At the same time, the final rule

[148] Under the final rule, all open-end transactions, whether traditional, reverse, or a combination of the two, count toward the open-end loan-volume threshold.

[149] Under the final rule, dwelling-secured, commercial-purpose open-end lines of credit will be covered loans only if they are for home purchase, home improvement, or refinancing purposes. See the section-by-section analysis of § 1003.3(c)(10).

[150] *See* 79 FR 51731, 51757 (Aug. 29, 2014).

[151] As the Bureau discussed in the proposal, due to the lack of available data concerning open-end lending, the Bureau has faced challenges in analyzing the impact on HMDA's institutional and transactional coverage of including open-end lines of credit. *See* 79 FR 51731, 51754 (Aug. 29, 2014). Although it solicited information that would assist it in making these estimates, *see id.,* commenters did not provide responsive data. After careful analysis, the Bureau has developed rough estimates

Continued

will improve the availability of data concerning open-end dwelling-secured lending by collecting data from a sufficient array of institutions and about a sufficient array of transactions. The Bureau estimates that nearly 90 percent of all open-end line of credit originations will be reported under the final rule.[152] This change to institutional coverage, along with the finalization of mandatory reporting of all consumer-purpose open-end lines of credit, will improve the public and public officials' ability to monitor and understand all sources of dwelling-secured lending and the risks posed to consumers and communities by those loans.

For those reasons, the Bureau is modifying Regulation C's definition of depository financial institution by adopting an open-end loan-volume threshold. Under the revised definition, an institution satisfies the definition of a depository financial institution if it meets the other applicable criteria and either originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years.

Two-Year Look-Back Period

The proposed loan-volume threshold provided in proposed § 1003.2(g)(1)(v) considered only a financial institution's lending activity during the previous calendar year. The Bureau solicited feedback on whether to structure the loan-volume threshold over a multiyear period to provide greater certainty about the reporting requirements. Many industry commenters, including small entity representatives, urged the Bureau to include a multiyear look-back period in the loan-volume threshold.

The Bureau believes that a two-year look-back period is advisable to eliminate uncertainty surrounding reporting responsibilities. Under the final rule, a financial institution that does not meet the loan-volume thresholds established in the final rule and that experiences an unusual and unexpected high origination-volume in one year will not be required to begin HMDA reporting unless and until the higher origination-volume continues for a second year in a row. A first-time HMDA reporter must undertake significant one-time costs that include operational changes, such as staff training, information technology changes, and document retention policies. Therefore, the Bureau believes that it is appropriate to develop a two-year look-back period for HMDA reporting to provide more stability around reporting responsibilities. Regulations that implement the Community Reinvestment Act provide similar look-back periods to determine coverage.[153]

Therefore, the Bureau is finalizing the loan-volume threshold included in § 1003.2(g)(1)(v) and (2)(ii) with modifications to include a two-year look-back period. Sections 1003.2(g)(1)(v) and (2)(ii) provide that, assuming the other criteria are satisfied, an institution qualifies as a depository financial institution or a nondepository financial institution if the institution meets the applicable loan-volume threshold in each of the two preceding calendar years.

Multifamily-Only Depository Institutions

Under Regulation C, loans related to multifamily dwellings (multifamily mortgage loans) do not factor into the coverage criteria applicable to depository institutions. A depository institution that does not originate at least one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one- to four-unit dwelling in the preceding calendar year is not required to report HMDA data.[154] The Bureau did not propose to eliminate the current loan activity test included in the coverage criteria for depository institutions. The proposal also did not solicit feedback on this aspect of the current coverage criteria or on other aspects of depository institutions' current coverage criteria.

Many community advocate commenters nonetheless urged the Bureau to expand depository institution coverage to require reporting by depository institutions that originate multifamily mortgage loans, but do not originate first-lien one- to four-unit home purchase loans or refinancings, and that meet the other coverage criteria. They argued that the current formulation makes it more difficult to understand availability of credit for multifamily dwellings. No industry commenters addressed this issue.

The Bureau is not adopting the commenters' suggestion at this time. The Bureau recognizes that this prong of HMDA's depository institution coverage test may exclude certain depository institutions and their loans from HMDA data. However, the Bureau estimates that this provision excludes a very small number of depository institutions and loans, fewer than 20 institutions and about 200 covered loans under the final rule.[155]

The Bureau adopts § 1003.2(g)(1) pursuant to its authority under section 305(a) of HMDA to provide for such adjustments and exceptions for any class of transactions that the Bureau judges are necessary and proper to effectuate the purposes of HMDA. Pursuant to section 305(a) of HMDA, for the reasons given above, the Bureau finds that this proposed exception is necessary and proper to effectuate the purposes of HMDA. By reducing burden on financial institutions and establishing a consistent loan-volume test applicable to all financial institutions, the Bureau finds that the proposed provision will facilitate compliance with HMDA's requirements.

2(g)(2) Nondepository Financial Institutions

HMDA extends reporting responsibilities to certain nondepository institutions, defined as any person engaged for profit in the business of mortgage lending other than a bank, savings association, or credit union.[156] HMDA section 309(a) also authorizes the Bureau to adopt an exemption for covered nondepository institutions that are comparable within their respective industries to banks, savings associations, and credit unions with $10 million or less in assets in the previous fiscal year.[157]

Under the current definition of financial institution in § 1003.2, a nondepository institution is a financial institution if it meets three criteria. First, the institution satisfies the following loan-volume or amount test: In the preceding calendar year, the

of home-equity line of credit origination volumes by institutions using 2013 HMDA data, 2013 Reports of Condition and Income (Call Report) data, and the Bureau's Consumer Credit Panel data. Given the scarcity of certain underlying data, these estimates rely on a number of assumptions. Nonetheless, for the reasons given above, including supporting increased visibility into the open-end line of credit market and reducing compliance burden for many institutions, the Bureau believes HMDA's purposes are best effectuated by adopting an open-end line of credit threshold. Part VII below discusses these estimates in more detail.

[152] *See* part VII.

[153] *See, e.g.,* 12 CFR 345.12(u)(1).

[154] *See* 12 CFR 1003.2 (definition of financial institution). When HMDA was enacted, the term ''federally related mortgage loan'' was defined in the Real Estate Settlement Procedures Act (RESPA) to include a loan secured by real property secured by a first lien on a one- to four-family dwelling and that meets other federally related tests. *See* Public Law 93–533, section 3164, 88 Stat. 1724 (1974).

[155] The Bureau developed this estimate using 2013 Call Report data.

[156] *See generally* HMDA sections 303(5) (defining ''other lending institutions''), 303(3)(B) (including other lending institutions in the definition of depository institution), and 304(a) (requiring depository institutions to collect, report, and disclose certain data if the institution has a home or branch office located in an MSA), 12 U.S.C. 2802(5), 2802(3), 2803(a).

[157] *See* HMDA section 309(a), 12 U.S.C. 2808(a).

institution originated home purchase loans, including refinancings of home purchase loans, that equaled either at least 10 percent of its loan-origination volume, measured in dollars, or at least $25 million.[158] Second, on the preceding December 31, the institution had a home or branch office in an MSA.[159] Third, the institution meets one of the following two criteria: (a) On the preceding December 31, the institution had total assets of more than $10 million, counting the assets of any parent corporation; or (b) in the preceding calendar year, the institution originated at least 100 home purchase loans, including refinancings of home purchase loans.[160]

The Bureau proposed to modify the coverage criteria for nondepository institutions by replacing the current loan-volume or amount test with the same loan-volume threshold that the Bureau proposed for depository institutions. Proposed § 1003.2(g)(2) defined a new term, nondepository financial institution, and provided that an institution that is not a bank, saving association, or credit union is required to report HMDA data if it had a home or branch office in an MSA on the preceding December 31 and it originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year. For the reasons discussed below, the Bureau is adopting § 1003.2(g)(2), which revises the coverage criteria applicable to nondepository institutions. Under the final rule, a nondepository institution is a nondepository financial institution and required to report HMDA data if it has a home or a branch office in an MSA and if it originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or 100 open-end lines of credit in each of the two preceding calendar years.

Loan-Volume Threshold

Most of the industry comments on this issue opposed the proposed expansion of nondepository institution coverage. These commenters explained that the proposed expansion would add only a small amount of additional data. Commenters also raised concerns about the burden on the nondepository institutions that would be newly covered. Some commenters suggested excluding more nondepository institutions from HMDA's institutional coverage, rather than expanding coverage of nondepository institutions, by adopting a loan-volume threshold higher than 100 closed-end mortgage loans annually, such as one set at origination of 250 closed-end mortgage loans annually. On the other hand, several consumer advocate commenters and a few industry commenters expressed support for the proposed expansion of nondepository institution coverage, arguing that nondepository institutions, like depository institutions, should be held accountable for their lending practices.

The Bureau believes, as stated in the proposal, that it is important to increase visibility into nondepository institutions' practices due to their history of riskier lending practices, including their role in the financial crisis, and the lack of available data about lower-volume nondepository institutions' mortgage lending practices. Therefore, the Bureau is adopting § 1003.2(g)(2), which requires reporting if the institution meets the location test and originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or 100 open-end lines of credit in each of the two preceding calendar years. The Bureau estimates that the final rule will require HMDA reporting by as much as 40 percent more nondepository institutions than are currently reporting.[161]

The expansion of nondepository institution reporting will address the longstanding need for additional monitoring of the mortgage lending practices of nondepository institutions. During the years leading up to the financial crisis, many stakeholders called for increased monitoring of nondepository institution activity in the mortgage market. Concerns about nondepository institution involvement in the subprime market motivated the Board to expand nondepository institution coverage in 2002.[162] In 2007, the GAO also identified risks associated with the lending practices of nondepository institutions, which were not subject to regular Federal examination at the time.[163] GAO found that 21 of the 25 largest originators of subprime and Alt-A loans in 2006 were nondepository institutions and that those 21 nondepository institutions had originated over 80 percent in dollar volume of the subprime and Alt-A loans originated in 2006.[164] GAO concluded that nondepository institutions ''may tend to originate lower-quality loans.'' [165] In 2009, GAO found that nondepository institutions that reported HMDA data had a higher incidence of potential fair lending problems than depository institutions that reported HMDA data.[166] GAO also suggested that the loan products and marketing practices of those nondepository institutions may have presented greater risks for applicants and borrowers.[167]

In the aftermath of the financial crisis, Congress also expressed concerns about the lending practices of nondepository institutions generally and called for greater oversight of those institutions.[168] In the Dodd-Frank Act, Congress granted Federal supervisory authority to the Bureau over a broad range of mortgage-related nondepository

[158] The Board adopted the 10 percent loan-volume test in 1989 to implement the 1989 FIRREA amendments, which extended HMDA's reporting requirements to institutions ''engaged for profit in the business of mortgage lending.'' *See* 54 FR 51356, 51358–59 (Dec. 15, 1989). In 2002, the Board modified the test and added the $25 million loan-volume test to require reporting by additional nondepository institutions. *See* 67 FR 7222, 7224 (Feb. 15, 2002).

[159] Under § 1003.2 (definition of branch office), a nondepository institution has a branch office in an MSA if it originated, received applications for, or purchased five or more covered loans in that MSA in the preceding calendar year.

[160] In 1989, the $10 million asset test, derived from section 309, applied to both depository and nondepository institutions. *See* 54 FR 51356, 51359 (Dec. 15, 1989). Because the 1989 amendments failed to cover as many nondepository institutions as Congress had intended, in 1991, Congress amended the asset test in HMDA section 309 to apply only to depository institutions, and it granted the Board discretion to exempt comparable nondepository institutions. *See* Public Law 102–242, section 224 (1991). Pursuant to that authority, the Board added the 100 loan-volume test for nondepository institutions in 1992. *See* 57 FR 56963, 56964–65 (Dec. 2, 1992).

[161] As discussed in part VII below, the Bureau developed this estimate using 2012 HMDA data and NMSLR data.

[162] *See* 65 FR 78656, 78657 (Dec. 15, 2000) (proposing changes to coverage of nondepository institutions); 67 FR 7222, 7224–25 (Feb. 15, 2002) (finalizing changes to coverage of nondepository institutions).

[163] *See* U.S. Gov't Accountability Office, GAO–08–78R, Briefing to the House of Representatives Committee on Fin. Services, *Information on Recent Default and Foreclosure Trends for Home Mortgages and Associated Economic and Market Dev.,* at 54 (2007), *available at http://www.gao.gov/assets/100/95215.pdf.*

[164] *Id.*

[165] *Id.*

[166] *See* U.S. Gov't Accountability Office, GAO–09–704, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts* at 28–29 (2009) (''[I]ndependent lenders and nonbank subsidiaries of holding companies are more likely than depository institutions to engage in mortgage pricing discrimination.''), *available at http://www.gao.gov/new.items/d09704.pdf.*

[167] *Id.* at 29–30. *See also* GAO–08–78R at 54.

[168] *See, e.g.,* House Consideration of HR 4173, 155 Cong. Rec. H14430 (daily ed. Dec. 9, 2009) (statement of Cong. Ellison), ''One of the most important causes of the financial crisis, as I mentioned, is the utter failure of consumer protection. The most abusive and predatory lenders were not federally regulated, were not regulated at all in some cases, while regulation was overly lax for banks and other institutions that were covered.''); U.S. Gov't Accountability Office, GAO–09–704, *Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts* at 28–29 (2009), *available at http://www.gao.gov/new.items/d09704.pdf.*

institutions because it was concerned about nondepository institutions' practices generally and believed that the lack of Federal supervision of those institutions had contributed to the financial crisis.[169] In addition, officials that participated in the Financial Crisis Inquiry Commission hearings in 2010 noted that practices that originated in the nondepository institution mortgage sector, such as lax underwriting standards and loan products with potential payment shock, created competitive pressures on depository institutions to follow the same practices, which may have contributed to the broader financial crisis.[170] During the Board's 2010 Hearings, community advocates and Federal agencies specifically urged expansion of HMDA's institutional coverage to include lower-volume nondepository institutions. They stated that Regulation C's existing institutional coverage framework prevented them from effectively monitoring the practices of nondepository institutions.[171]

Despite these calls for increased monitoring of nondepository institutions, currently there are less publicly available data about nondepository institutions' mortgage lending practices than about those of depository institutions. Currently, under Regulation C, lower-volume depository institutions may be required to report even if they originated only one mortgage loan in the preceding calendar year, but lower-volume nondepository institutions may not be required to report unless they originated 100 applicable loans in the preceding calendar year.[172] In addition, outside of HMDA, there are less publicly available data about nondepository institutions than about depository institutions. Depository institutions, even those that do not report HMDA data, report detailed financial information at the bank level to the Federal Deposit Insurance Corporation (FDIC) or to the National Credit Union Association (NCUA), much of which is publicly available.[173] Nondepository institutions, on the other hand, report some data to the Nationwide Mortgage Licensing System and Registry (NMLSR), but detailed financial information and data on mortgage applications and originations are not publicly available.[174]

The final rule addresses this information gap by including the same loan-volume threshold for nondepository institutions as for depository institutions. The expanded coverage of nondepository institutions will provide more data to the public and public officials for analyzing whether lower-volume nondepository institutions are serving the housing needs of their communities. In addition, with the expanded coverage, the public and public officials will be better able to understand access to and sources of credit in particular communities, such as a higher concentration of risky loan products in a given community, and to identify the emergence of new loan products or underwriting practices. In addition, the final rule will provide more data to help the public and public officials in understanding whether a lower-volume nondepository institution's practices pose potential fair lending risks.

The final rule also considers origination of open-end lines of credit in the institutional coverage test for nondepository institutions. The Bureau believes that this revision is necessary to achieve greater visibility into all extensions of credit secured by a dwelling, as discussed above in the section-by-section analysis of § 1003.2(g)(1). In addition, for the reasons discussed above in the section-by-section analysis of § 1003.2(g)(1), the final rule also incorporates a two-year look-back period for nondepository institution coverage.

Asset-Size or Loan-Volume Threshold

The current coverage criteria for nondepository institutions include an asset-size or loan-volume threshold.[175] This test is satisfied both by institutions that meet a certain asset-size threshold and by those with smaller asset sizes that have a higher loan-volume.[176] The Bureau proposed to eliminate the asset-size or loan-volume threshold for nondepository institutions currently included in Regulation C because, for the reasons discussed above, the Bureau believes it is important to increase visibility into the practices of nondepository institutions. A few industry commenters objected to the proposal's elimination of the asset-size portion of the asset-size or loan-volume threshold for nondepository institutions. The Bureau believes that the current asset-size or loan-volume threshold is no longer necessary, because the Bureau is adopting the 25 closed-end mortgage loan-volume threshold and 100 open-end line of credit threshold discussed in this section. Under the final rule, nondepository institutions will be required to report if they originated 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years. An institution's asset-size will no longer trigger reporting (*i.e.,* nondepository institutions with assets greater than $10 million that originated fewer than 25 closed-end mortgage loans or fewer than 100 open-end lines of credit in each of the two preceding calendar years will not be required to report HMDA data). In addition, at this time and in light of the coverage criteria being finalized, the Bureau does not believe the asset-size exemption is necessary. The Bureau believes that it is appropriate to exercise its discretion under HMDA section 309(a) to eliminate the exemption of certain nondepository institutions based on their asset-size.[177]

[169] *See* Dodd-Frank Act section 1024.

[170] *See* Official Transcript of First Public Hearing of the Financial Crisis Inquiry Commission at 97–98 (Jan. 10, 2010), (remarks of Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation, and Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission), *available at http://fcic-static.law.stanford.edu/cdn_media/fcic-testimony/2010-0114-Transcript.pdf.*

[171] *See, e.g.,* San Francisco Hearing, *supra* note 42; Washington Hearing, *supra* note 39 (remarks of Faith Schwartz, Senior Advisor, HOPE NOW Alliance) (urging reporting by all institutions that have ''any meaningful originations''); *id.* (remarks of Allison Brown, Acting Assistant Director, Division of Financial Practices, Federal Trade Commission) (urging expanded reporting by nondepository institutions ''to ensure that all nondepository institutions that made significant numbers of mortgage decisions report these essential data, providing the government and the public an accurate, timely picture of mortgage lending activity''); *id.* (remarks of Michael Bylsma, Director for Community and Consumer Law, Office of the Comptroller of the Currency) (urging the Board to ''review whether its rule-making authority'' would permit it to expand HMDA coverage to additional institutions); Atlanta Hearing, *supra* note 40.

[172] Banks, savings associations, and credit unions are required to report if they originate at least one home purchase or refinancing of a home purchase loan secured by a first lien on a one- to four-family dwelling and if they meet the other criteria in the definition of financial institution. *See* Section 1003.2 (definition of financial institution).

[173] Every national bank, State member bank, and insured nonmember bank is required by its primary Federal regulator to file consolidated Reports of Condition and Income, also known as Call Report data, for each quarter as of the close of business on the last day of each calendar quarter (the report date). The specific reporting requirements depend upon the size of the bank and whether it has any foreign offices. *See, e.g.,* FDIC, Call and Thrift Financial Reports, *http://www2.fdic.gov/call_tfr_rpts/.* Credit unions are also required to report Call Report data to NCUA. *See, e.g.,* NCUA, 53000 Call Report Quarterly Data, *http://www.ncua.gov/DataApps/QCallRptData/Pages/default.aspx.*

[174] NMLSR is a national registry of nondepository institutions. Nondepository institutions report information about mortgage loan originators, mortgage loan originations, the number and dollar amount of loans brokered, and HOEPA originations.

[175] Section 1003.2 (financial institution) (2).

[176] Section 1003.2 (financial institution) (2)(B)(iii).

[177] The Bureau consulted with HUD as part of the interagency consultation process for this rulemaking.

Loan-Amount or Loan-Volume Threshold

No commenters discussed the proposed new implementation of HMDA sections 303(3)(B) and 303(5), which require persons other than banks, savings associations, and credit unions that are ''engaged for profit in the business of mortgage lending'' to report HMDA data. As the Bureau stated in the proposal, the Bureau interprets these provisions, as the Board also did, to evince the intent to exclude from coverage institutions that make a relatively small volume of mortgage loans.[178] In light of more recent activities of nondepository institutions discussed above, the Bureau believes that Regulation C's current coverage test for nondepository institutions inappropriately excludes certain persons that are engaged for profit in the business of mortgage lending. The Bureau estimates that financial institutions that reported 25 loans in HMDA for the 2012 calendar year originated an average of approximately $5,359,000 in covered loans annually. Given this level of mortgage activity, and consistent with the policy reasons discussed above, the Bureau interprets ''engaged for profit in the business of mortgage lending'' to include nondepository institutions that originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years. Due to the questions raised about potential risks posed to applicants and borrowers by nondepository institutions and the lack of other publicly available data sources about nondepository institutions, the Bureau believes that requiring additional nondepository institutions to report HMDA data will better effectuate HMDA's purposes.

2(h) Home-Equity Line of Credit

Regulation C currently defines ''home-equity line of credit'' as an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 1026. The Bureau did not propose to change this definition. Existing § 1003.4(c)(3), in turn, provides that financial institutions optionally may report home-equity lines of credit made in whole or in part for home improvement or home purchase purposes. As discussed in the section-by-section analysis of § 1003.2(e) and (o), the Bureau proposed to expand Regulation C's transactional coverage to require reporting of all home-equity lines of credit.

As part of the shift to dwelling-secured coverage, the Bureau proposed a separate definition for ''open-end lines of credit'' in § 1003.2(o), to reflect the proposed coverage of both consumer- and commercial-purpose lines of credit. As proposed, § 1003.2(o) generally defined an open-end line of credit as a dwelling-secured transaction that was an open-end credit plan under Regulation Z § 1026.2(a)(20), but without regard to whether the transaction: (1) Was for personal, family, or household purposes; (2) was extended by a creditor; or (3) was extended to a consumer. In other words, the proposal defined ''open-end line of credit'' broadly to include any dwelling-secured open-end credit transaction, whether for consumer or commercial purposes, and regardless of who was extending or receiving the credit. In general, then, the proposed definition of open-end line of credit included all transactions covered by the existing definition of home-equity line of credit in § 1003.2. For the reasons discussed below, the final rule removes the term ''home-equity line of credit'' from the regulation, reserves § 1003.2(h), and retains the term ''open-end line of credit.''

As discussed in the section-by-section analysis of § 1003.2(o), the Bureau received a large number of comments about its proposal to require reporting of all dwelling-secured open-end lines of credit, and those comments are addressed in that section. One commenter specifically addressed the Bureau's proposal to define both ''home-equity line of credit'' and ''open-end line of credit.'' The commenter supported adding a definition for ''open-end line of credit'' but believed that distinguishing between open-end lines of credit and home-equity lines of credit was confusing. The commenter suggested that the Bureau streamline the types of covered transactions into dwelling-secured closed-end mortgage loans, dwelling-secured open-end lines of credit, and reverse mortgages (whether closed- or open-end).

As discussed in the section-by-section analysis of § 1003.2(o), the final rule adopts the proposed definition of open-end line of credit largely as proposed. For simplicity, the final rule removes the defined term ''home-equity line of credit'' and retains the defined term ''open-end line of credit'' to refer to all open-end credit transactions covered by the regulation.

The final rule requires financial institutions to report whether a transaction is an open-end line of credit (§ 1003.4(a)(37)), a commercial- or business-purpose transaction (§ 1003.4(a)(38)), or a reverse mortgage (§ 1003.4(a)(36)). Using this information, it will be possible to determine whether a given open-end line of credit primarily is for consumer purposes (*i.e.,* a home-equity line of credit) or primarily is for commercial or business purposes, and also whether it is a reverse mortgage. The Bureau thus believes that it is unnecessary to retain the defined term ''home-equity line of credit.''

2(i) Home Improvement Loan

Proposed § 1003.2(i) provided that a home improvement loan was any covered loan made for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling, or the real property on which the dwelling is located. Pursuant to the Bureau's authority under HMDA section 305(a), the proposal revised § 1003.2(i) and its accompanying commentary to conform to the proposal to remove non-dwelling-secured home improvement loans from coverage, and to clarify when to report dwelling-secured home improvement loans. For the reasons discussed below, the Bureau is finalizing § 1003.2(i) largely as proposed, with certain technical revisions to the regulation text,[179] and with revisions to the commentary to streamline it and to add examples or details requested by commenters.

The Bureau received numerous comments from consumer advocacy groups, financial institutions, trade associations, and other industry participants concerning proposed § 1003.2(i). Most of the comments focused on the proposal to exclude non-dwelling-secured home improvement loans from reporting, with nearly all industry participants supporting the proposal and consumer advocacy groups generally opposing it. A few commenters requested that the Bureau clarify certain aspects of the commentary to the home improvement loan definition.

Non-Dwelling-Secured Home Improvement Lending

Consumer advocacy groups uniformly stated that the Bureau should maintain reporting of home improvement lending, because such lending has been particularly important to low- and

[178] *See* 54 FR 51356, 51358–59 (Dec. 15, 1989).

[179] For example, the final rule replaces the term ''covered loan'' in § 1003.2(i) with the terms ''closed-end mortgage loan'' and ''open-end line of credit.'' This change reflects the fact that, under final §§ 1003.2(e) and 1003.3(c)(10), business- or commercial-purpose transactions are covered loans only if they are for the purpose of home purchase, home improvement, or refinancing. Retaining the term ''covered loan'' in the definition of home improvement loan would cause circularity in the definition of commercial-purpose transactions.

moderate-income borrowers and borrowers of color as a way to finance home repairs. Most of these commenters did not specifically distinguish between dwelling-secured and non-dwelling-secured home improvement lending or specify how they use non-dwelling-secured home improvement lending data, in particular, to achieve HMDA's purposes.

One financial institution urged the Bureau to retain reporting of non-dwelling-secured home improvement lending, at least on an optional basis. This commenter stated that non-dwelling-secured home improvement lending can be critical in revitalizing low-to-moderate income communities, including in rural areas, and for financing manufactured home improvements. The commenter expressed concern that financial institutions might stop offering non-dwelling-secured home improvement loans if they were no longer HMDA-reportable. The commenter believed that borrowers would be steered toward home-equity lines of credit, which might be unavailable to low- and moderate-income borrowers with inadequate home equity. The commenter argued that optional reporting would relieve burden for institutions that choose not to report, while allowing institutions that do report to receive credit for serving the housing needs of their communities.

All other industry commenters that addressed proposed § 1003.2(i) supported excluding non-dwelling-secured home improvement loans from coverage.[180] Many of these commenters stated that reporting such loans is burdensome and costly because it is difficult to determine whether the loan will be used for a housing-related purpose, because reporting errors occur frequently, and because examiners have not treated non-dwelling-secured home improvement lending consistently. Other commenters noted that the value of non-dwelling-secured home improvement loan data is limited. Interest rates and terms can vary dramatically depending on the loan and non-dwelling collateral used, and consumers now often use home-equity lines of credit. One commenter stated that the burdens of reporting can outweigh the benefits of making the loans, because non-dwelling-secured home improvement loan amounts tend to be small.

The Bureau is finalizing § 1003.2(i) as proposed, without a requirement to report non-dwelling-secured home improvement loans. At this time, the Bureau does not believe that the benefits of requiring reporting of such loans justify the burdens. For example, many consumer advocacy group commenters urged the Bureau to retain reporting of all home improvement loans because such loans are important to low-to-moderate income communities. These commenters, however, did not state that they or others have used HMDA data about non-dwelling-secured home improvement loans to further HMDA's purposes. Moreover, as discussed in the proposal, non-dwelling-secured home improvement loans may have been common when HMDA was enacted. However, such loans now comprise only a small fraction of transactions reported,[181] and borrowers have other non-dwelling-secured credit options, such as credit cards, to fund home improvement projects.[182] Data about credit card usage for home improvement purposes, however, is not reported under HMDA. Without such data, it is not clear that HMDA users can evaluate fairly the non-dwelling-secured home improvement loan data that is reported.

On the other hand, the burdens of reporting such transactions appear to be significant. As discussed in the proposal, these loans are processed, underwritten, and originated through different loan origination systems than are used for dwelling-secured lending.[183] As noted above, many industry commenters confirmed and elaborated on the burdens of reporting non-dwelling-secured home improvement loans discussed in the Bureau's proposal.

On balance, the Bureau concluded that the compliance burden that will be eliminated by streamlining the regulation to require reporting only of dwelling-secured loans justifies the relatively small data loss that will accompany the change. The Bureau considered, as one commenter suggested, maintaining optional reporting of non-dwelling-secured home improvement loans. However, one of the proposal's goals was to simplify Regulation C's transactional coverage. Maintaining optional reporting of non-dwelling-secured home improvement loans would inhibit the Bureau's ability to reduce regulatory complexity by focusing on dwelling-secured lending for an apparently small benefit.[184] Thus, the final rule requires financial institutions to report only dwelling-secured loans. Unsecured home improvement loans and home improvement loans secured by collateral other than a dwelling (*e.g.,* a vehicle or savings account), are not reportable.

One commenter objected that the Bureau's proposal to eliminate reporting of non-dwelling-secured home improvement loans did not address the fact that the HMDA statute still requires reporting of home improvement loans. The Bureau believes, however, that requiring financial institutions to report dwelling-secured home improvement loans satisfies the statutory requirement. As the proposal noted, HMDA does not expressly define ''home improvement loan.'' Although non-dwelling-secured home improvement loans traditionally have been reported, the Bureau believes that it is reasonable to interpret HMDA section 303(2) to include only loans that are secured by liens on dwellings, as that interpretation aligns with common definitions of the term mortgage loan, and such loans will include home improvement loans.[185]

The Bureau also is eliminating reporting of non-dwelling-secured home improvement loans pursuant to its authority under section 305(a) of HMDA, as the Bureau believes that this adjustment and exception is necessary and proper to effectuate HMDA's purposes and to facilitate compliance. Specifically, the Bureau believes that non-dwelling-secured home improvement loan data may distort the overall quality of the HMDA dataset for the reasons described above. The Bureau believes that eliminating reporting of non-dwelling-secured home improvement loans will improve the

[180] Various commenters recommended eliminating the home improvement purpose category for all loans. Those comments are addressed in the section-by-section analysis of § 1003.4(a)(3).

[181] *See* 79 FR 51731, 51755 (Aug. 29, 2014) (noting that non-dwelling-secured home improvement loans comprised only approximately 1.8 percent of all HMDA records in 2012).

[182] *See id.* at 51755, 51765–66 (Aug. 29, 2014) (citing Arthur Kennickell & Martha Starr-McCluer, Bd. of Governors of the Fed. Reserve Sys., 80 Fed. Reserve Bulletin 861, *Changes in Family Finances from 1989 to 1992: Evidence from the Survey of Consumer Finances,* at 874–75 (Oct. 1994), *available at http://www.federalreserve.gov/econresdata/scf/files/1992_bull1094.pdf;* Arthur Kennickell & Janice Shack-Marquez, Bd. of Governors of the Fed. Reserve Sys., 78 Fed. Reserve Bulletin 1, *Changes in Family Finances from 1983 to 1989: Evidence from the Survey of Consumer Finances,* at 13 (Jan. 1992), *available at http://www.federalreserve.gov/econresdata/scf/files/bull0192.pdf;* and David Evans & Richard Schnakebsee, *Paying With Plastic,* Massachusetts Institute of Technology Press 98–100 (1991)).

[183] *See id.* at 51755 (Aug. 29, 2014) (citing Chicago Hearing, *supra* note 46 and Atlanta Hearing, *supra* note 40).

[184] The Bureau acknowledges that removing non-dwelling-secured home improvement lending will affect some institutions' reported transaction volumes, which in turn will affect CRA reporting. The Bureau will work with other regulators during the Regulation C implementation period to address these issues.

[185] *See* 79 FR 51731, 51755–56 (Aug. 29, 2014).

quality of HMDA data, which will provide citizens and public officials of the United States with sufficient information to enable them to determine whether financial institutions are meeting the housing needs of their communities and to assist public officials in determining how to distribute public sector investments in a manner designed to improve the private investment environment. The Bureau further believes that eliminating these loans will facilitate compliance by removing a significant reporting burden.

Home Improvement Loan Definition

A few commenters asked the Bureau to clarify certain aspects of home improvement loan reporting as addressed in the commentary. The final rule adopts the commentary generally as proposed, but with several revisions and additions to address commenters' questions, as well as certain other modifications for clarity, as discussed below.

Proposed comment 2(i)–1, which provided general guidance about home improvement loans, is adopted as proposed, but with several non-substantive revisions for clarity and with an additional example of a transaction that meets the home improvement loan definition. Consistent with the final rule's requirement under § 1003.2(d) to report loans completed pursuant to a New York CEMA, final comment 2(i)–1 explains that, where all or a portion of the funds from a CEMA transaction will be used for home improvement purposes, the loan is a home improvement loan under § 1003.2(i). One commenter asked whether loans that are not ''classified'' by an institution as home improvement loans nonetheless should be reported as home improvement loans if the supporting documents show that they were for home improvement purposes. The classification test in existing Regulation C applies only to non-dwelling-secured home improvement loans. As discussed, the final rule eliminates such loans from coverage. Under the final rule, there no longer is any requirement that a loan be ''classified'' by a financial institution as a home improvement loan to be a home improvement loan under § 1003.2(i).

The Bureau did not propose to revise existing comment Home improvement loan-3. The final rule adopts this comment as comment 2(i)–3 with minor revisions to reflect the fact that the final rule requires reporting of both closed- and open-end transactions.

Proposed comment 2(i)–4 concerning mixed-use properties is adopted largely as proposed. The comment is revised for clarity and to eliminate the statement that a home improvement loan for a mixed-use property is reported as such only if the property itself is primarily residential in nature. Under § 1003.2(e) and (f), a transaction is a covered loan and subject to Regulation C only if it is secured by a dwelling, which by definition is property that is primarily residential in nature. Thus, financial institutions need not separately consider whether a dwelling primarily is residential in nature when determining whether a loan is a home improvement loan under § 1003.2(i).

The proposal would have removed existing comment Home improvement loan-5, which discusses how to report a home improvement loan that also is a home purchase loan or a refinancing, because the proposal consolidated all such reporting instructions in § 1003.4. The final rule retains existing comment Home improvement loan-5 and adopts it as comment 2(i)–5 to explain that a transaction with multiple purposes may meet multiple loan-type definitions. The comment provides an example to illustrate that a transaction that meets the definition of a home improvement loan under § 1003.2(i) may also meet the definition of a refinancing under § 1003.2(p). Comment 2(i)–5 also specifies that instructions for reporting a multiple-purpose covered loan are in the commentary to § 1003.4(a)(3).

A few commenters asked the Bureau to clarify further how a financial institution determines whether a loan is a home improvement loan. For example, one commenter asked whether a cash-out refinance also is a home improvement loan if the borrower states that some of the cash may be used for home improvement. Another asked whether a loan is a home improvement loan when a consumer states that a loan is for home improvement purposes but it is in fact for purchasing a household item. This commenter also requested that ''small-dollar'' home improvement loans be exempt from reporting.

In response to these comments, the final rule includes comment 2(i)–6, which provides that a financial institution relies on the borrower's stated purpose for the loan when the application is received or the credit decision is made, and need not confirm that the borrower actually uses any of the funds for home improvement purposes. If the borrower does not state that any of the funds will be used for home improvement purposes, or does not state any purpose for the funds, the loan is not a home improvement loan. Section 1003.4(a)(3) and related commentary provide instructions about how to report such loans. *See* the section-by-section analysis of § 1003.4(a)(3). The final rule does not specifically exempt small-dollar home improvement loans, because the Bureau believes that information about such loans is valuable, but the final rule retains in § 1003.3(c)(7) the current exclusion from coverage for transactions for less than $500.

2(j) Home Purchase Loan

Regulation C currently provides that a home purchase loan is a loan secured by and made for the purpose of purchasing a dwelling. Proposed § 1003.2(j) revised the definition to provide that a home purchase loan is a ''covered loan'' extended for the purpose of purchasing a dwelling. The proposal also revised the commentary to proposed § 1003.2(j) in several ways, primarily to conform the commentary to the proposal's overall shift to covering only dwelling-secured transactions. Only a handful of commenters addressed proposed § 1003.2(j) or its accompanying commentary, and none of them specifically commented on the proposed regulation text. The Bureau is finalizing § 1003.2(j) largely as proposed, with technical revisions for clarity.[186] The Bureau is finalizing the commentary to § 1003.2(j) with revisions to address questions that commenters raised regarding assumptions, to clarify how Regulation C applies to multiple-purpose transactions, and to remove certain comments as unnecessary.

First, the Bureau is not adopting proposed comment 2(j)–1 in the final rule. Proposed comment 2(j)–1 provided general guidance about the definition of home purchase loan, including an illustrative example stating that a home purchase loan includes a closed-end mortgage loan but does not include a home purchase completed through an installment contract. No commenters addressed proposed comment 2(j)–1. The final rule incorporates the terms ''closed-end mortgage loan'' and ''open-end credit plan'' in § 1003.2(j). Thus, there is no need to restate in commentary that a closed-end mortgage loan used to purchase a dwelling is a home purchase loan. The Bureau is finalizing the illustrative example discussing installment contracts in commentary to § 1003.2(d), which

[186] Specifically, the final rule replaces the term ''covered loan'' in § 1003.2(j) with the terms ''closed-end mortgage loan'' and ''open-end line of credit.'' This change reflects the fact that, under final §§ 1003.2(e) and 1003.3(c)(10), business- or commercial-purpose transactions are covered loans only if they are for the purpose of home purchase, home improvement, or refinancing. Retaining the term ''covered loan'' in the definition of home purchase loan would cause circularity in the definition of commercial-purpose transactions.

provides guidance about the term closed-end mortgage loan. *See* the section-by-section analysis of § 1003.2(d).

The proposal renumbered as proposed comment 2(j)–2 existing comment Home purchase loan-1, which provides that a home purchase loan includes a loan secured by one dwelling and used to purchase another dwelling. Two industry commenters stated that ''home purchase loan'' should not include these loan types and recommended that they be defined instead as ''home-equity loans.'' The commenters stated that, under Regulation Z, a loan is not a home purchase loan (*i.e.,* a ''residential mortgage transaction'' under Regulation Z § 1026.2(a)(24)) unless its funds are used to purchase the property securing the dwelling. The commenters stated that industry stakeholders generally view loans secured by one dwelling but used to purchase a different dwelling as home-equity loans, not as purchase loans.

Revising § 1003.2(j) in the way that commenters suggested would better align Regulations C and Z. In general, regulatory consistency is desirable; however, HMDA's purposes are different from Regulation Z's purposes. To understand how financial institutions are meeting the housing needs of their communities, it is important to understand the total volume of loans made to purchase dwellings, even if those loans are secured by dwellings other than the ones being purchased. The suggested revision also would require adding a new defined term, home-equity loan, to Regulation C. This term necessarily would lump together loans secured by one dwelling, but used to purchase, improve, or refinance loans on other dwellings; reporting the loans in this way would obscure the valuable information described above. Thus, the Bureau is finalizing proposed comment 2(j)–2 largely as proposed, with certain non-substantive revisions for clarity, and renumbered as comment 2(j)–1.

The Bureau received no comments addressing proposed comment 2(j)–3, which made only minor revisions to existing comment Home purchase loan-2 addressing whether a transaction to purchase a mixed-use property is a home purchase loan. However, the final rule eliminates this comment as unnecessary. As proposed, the comment stated that a transaction to purchase a mixed-use property is a home purchase loan if the property primarily is used for residential purposes, and it provided guidance about how to determine the primary use of the property. Under the final rule, a transaction is not covered by Regulation C unless it is secured by a dwelling, which is defined under § 1003.2(f) to include only mixed-use properties that primarily are used for residential purposes. Because financial institutions will have determined under § 1003.2(f) whether a mixed-used property is a dwelling, there is no need to reevaluate that decision when determining whether a transaction is a home purchase loan.

Consistent with the proposal's consolidation of excluded transactions into § 1003.3(c), the proposal moved existing comment Home purchase loan-3, which discusses agricultural-purpose loans, to proposed comment 3(c)(9)–1. No commenters addressed this reorganization, and the Bureau is finalizing proposed comment 3(c)(9)–1, with revisions, as discussed in the section-by-section analysis of § 1003.3(c)(9).

The proposal did not propose to revise existing comments Home purchase loan-4, -5, or -6, and the Bureau received no comments addressing them. These comments are adopted in the final rule as comments 2(j)–2 through –4, respectively, with minor revisions for clarity.

As discussed in the section-by-section analysis of § 1003.1(c) regarding Regulation C's scope, the proposal reorganized the commentary to § 1003.1(c). Consistent with that reorganization, the proposal incorporated a revised version of existing comment 1(c)–9, which discusses coverage of assumptions, as comment 2(j)–7 to the definition of home purchase loan. One industry commenter addressed this comment. The commenter argued that proposed comment 2(j)–7 should specify, consistent with Regulation Z, that a successor-in-interest transaction is not an assumption.

The final rule adopts proposed comment 2(j)–7 as comment 2(j)–5, with revisions to address the comment received, and with other clarifying revisions, as follows. First, comment 2(j)–5 states that an assumption is a home purchase loan only if the transaction is to finance the new borrower's acquisition of the property (and not, *e.g.,* if the borrower has succeeded in interest to ownership).[187] Also, consistent with § 1003.2(d) and comment 2(d)–2.ii, which provide that transactions documented pursuant to New York consolidation, extension and modification agreements are extensions of credit, comment 2(j)–5 clarifies that a transaction in which borrower B finances the purchase of borrower A's dwelling by assuming borrower A's existing debt obligation is a home purchase loan even if the transaction is documented pursuant to a New York consolidation, extension, and modification agreement.

The Bureau proposed to remove existing comment Home purchase loan-7, which described how to report multiple-purpose home-purchase loans, because the proposal consolidated all such reporting instructions in § 1003.4. The final rule retains as comment 2(j)–6 a variation of existing comment Home purchase loan-7 to explain that a transaction with multiple purposes may meet multiple loan-type definitions. The comment provides an illustrative example and specifies that instructions for reporting a multiple-purpose loan are in the commentary to § 1003.4(a)(3).

Two commenters requested additional guidance about the definition of home purchase loan. One commenter stated that additional guidance is necessary because there are several ways to transfer property ownership to third parties, not all of which are called a ''purchase.'' The commenter did not specify the other methods it was referencing. As discussed, comment 2(j)–5 provides guidance about two additional methods of title transfer. The Bureau can address additional scenarios in the future, if necessary. Another commenter requested guidance about whether a loan to one sibling to purchase half of another sibling's home, which the other sibling owns outright, is a reportable home purchase loan or a refinancing when the loan is secured by the portion of the home being purchased. Based on the details provided, such a transaction is reportable, because it is a dwelling-secured loan and is not excluded under § 1003.3(c). Because it is for the purpose of purchasing a dwelling, and it does not satisfy and replace an existing, dwelling-secured debt obligation, it is a home purchase loan but it is not a refinancing. *See* the section-by-section analysis of § 1003.2(p).

2(k) Loan/Application Register

Regulation C requires financial institutions to collect and record reportable data in a format prescribed by the regulation. The Bureau proposed to refer to this format as the ''loan application register'' to improve the readability of the regulation and proposed to define it as a register in the format prescribed in appendix A. The Bureau did not receive any comments on this proposed definition. As

[187] However, as discussion in the section-by-section analysis of § 1003.2(d), the final rule provides that successor-in-interest transactions are assumptions for purposes of Regulation C.

explained in part I.B above, in order to streamline the regulation, the final rule removes appendix A. Therefore, the Bureau is revising proposed § 1003.2(k) to remove references to appendix A and defining loan/application register to mean both the record of information required to be collected pursuant to § 1003.4 and the record submitted annually or quarterly, as applicable, pursuant to § 1003.5(a). In addition, the Bureau is adding ''/'' to maintain consistency with the term as currently used and to clarify that the data recorded represents applications as well as loan originations. Accordingly, the Bureau is adopting § 1003.2(k) with revisions.

2(l) Manufactured Home

The Bureau proposed to make technical corrections and minor wording changes to the definition of manufactured home. Commenters generally supported aligning the definition of manufactured home with the HUD standards and clarifying that other factory-built homes and recreational vehicles are excluded. Other comments related to coverage and reporting of manufactured homes and similar residential structures are discussed in the section-by-section analysis of § 1003.2(f) and § 1003.4(a)(5). The Bureau is finalizing § 1003.2(l) generally as proposed, with minor revisions. The definition is revised to clarify that, for purposes of the construction method reporting requirement under § 1003.4(a)(5), a manufactured home community should be reported as manufactured home. The Bureau received no specific feedback on proposed comments 2(l)–1 and –2, which are adopted as proposed.

2(m) Metropolitan Statistical Area (MSA) and Metropolitan Division (MD)

Section 1003.2 of Regulation C sets forth a definition for the terms ''metropolitan statistical area or MSA'' and ''Metropolitan Division or MD.'' The Bureau is adopting a technical amendment to this definition and its commentary. No substantive change is intended.

2(n) Multifamily Dwelling

The Bureau proposed to add a new definition of multifamily dwelling as § 1003.2(n). Commenters supported the Bureau's proposal to define a multifamily dwelling as one that includes five or more individual dwelling units. A few commenters also supported the inclusion of manufactured home parks, as discussed in the proposal.[188] Some commenters requested clarification on the reporting requirements for multifamily dwellings. Other comments related to multifamily residential structures are addressed in the section-by-section analysis of § 1003.2(f). The Bureau is finalizing § 1003.2(n) as proposed. In response to the requests for clarification, the Bureau is also adding two comments related to the definition of multifamily dwelling. Comment 2(n)–1 clarifies how the definition interacts with the definition of dwelling and its reference to multifamily residential structures. Comment 2(n)–2 clarifies the special reporting requirements applicable to multifamily dwellings.

2(o) Open-End Line of Credit

HMDA section 303(2) defines ''mortgage loan'' as a residential real property-secured loan or a home improvement loan but does not specifically address coverage of open-end lines of credit secured by dwellings. Regulation C also currently does not define the term ''open-end line of credit.'' However, as discussed in the section-by-section analysis of § 1003.2(h), Regulation C currently defines the term ''home-equity line of credit'' as an open-end credit plan secured by a dwelling as defined in Regulation Z. Under existing Regulation C § 1003.4(c)(3), financial institutions may, but are not required to, report home-equity lines of credit made in whole or in part for home purchase or home improvement purposes.[189] Commercial-purpose lines of credit secured by a dwelling fall outside of Regulation Z's definition of open-end credit plan and thus are not optionally reported as home-equity lines of credit under existing Regulation C.

In 2000, in response to the increasing importance of open-end lending in the housing market, the Board proposed to revise Regulation C to require mandatory reporting of all home-equity lines of credit.[190] The Board's proposal was based on research showing that about 70 percent of all home-equity lines of credit were being used at least in part for home improvement purposes. The Board believed that requiring reporting of all home-equity lines of credit would provide more complete information about the home improvement market, one of HMDA's original purposes.[191] The Board's 2002 final rule concluded that, while collecting data on home-equity lines of credit would give a more complete picture of the home mortgage market, the benefits of mandatory reporting relative to other proposed changes (such as collecting information about higher-priced loans) did not justify the increased burden.[192] The Board thus decided to retain optional reporting.

Open-end mortgage lending continued to increase in the years following the Board's 2002 final rule, and the Board continued to receive feedback urging such lending to be reported in HMDA.[193] The Bureau received similar feedback after it assumed rulemaking authority for HMDA from the Board in 2011.[194] The feedback suggested that home-equity lines of credit have become increasingly important to the housing market and that requiring such lending to be reported under Regulation C would help to understand how financial institutions are meeting the housing needs of communities. The Bureau thus proposed to require financial institutions to report all home-equity lines of credit, as well as all commercial-purpose lines of credit secured by a dwelling.

Specifically, the Bureau proposed new § 1003.2(o) to define the term ''open-end line of credit,'' which included any dwelling-secured open-end credit plan, as described under Regulation Z § 1026.2(a)(20), even if the credit was issued by someone other than a creditor (as defined in Regulation Z § 1026.2(a)(17)), to someone other than a consumer (as defined in Regulation Z § 1026.2(a)(11)) and for business rather than consumer purposes (as defined in

[188] 79 FR 51731, 51749 (Aug. 29, 2014); Fed. Fin. Insts. Examination Council, CRA/HMDA Reporter, *Changes Coming to HMDA Edit Reports in 2010* (Dec. 2010), *available at http://www.ffiec.gov/hmda/pdf/10news.pdf.*

[189] Under existing Regulation C § 1003.4(a)(7) and comment 4(a)(7)–3, if a financial institution opts to report home-equity lines of credit, it reports only the portion of the line intended for home improvement or home purchase.

[190] Home-equity lines of credit were rare in the 1970s and early 1980s when Regulation C was first implemented. Regulation C first addressed home-equity lines of credit in 1988, when it permitted financial institutions to report home-equity lines of credit that were home improvement loans. *See* 53 FR 31683, 31685 (Aug. 19, 1988).

[191] *See* 65 FR 78656, 78659–60 (Dec. 15, 2000).

[192] *See* 67 FR 7222, 7225 (Feb. 15, 2002).

[193] *See, e.g.,* Donghoon Lee et al., Fed. Reserve Bank of New York, Staff Report No. 569, *A New Look at Second Liens,* at 11 (Aug. 2012) (approximately $20 billion in home-equity lines of credit were originated in the fourth quarter of 1999; by the fourth quarter of 2005, approximately $125 billion in HELOCs were originated). *See generally, e.g.,* Atlanta Hearing, *supra* note 40; San Francisco Hearing, *supra* note 42; Chicago Hearing, *supra* note 46; Washington Hearing, *supra* note 39.

[194] *See, e.g.,* National Community Reinvestment Coalition et al., *Creating Comprehensive HMDA and Loan Performance Databases: White Paper Submitted to the Consumer Financial Protection Bureau* at 15 (Feb. 15, 2013), *available at http://www.empirejustice.org/assets/pdf/policy-advocacy/consumer-organizations-urge.pdf.*

Regulation Z § 1026.2(a)(12)). Together with proposed § 1003.2(e), which provided that all open-end lines of credit were ''covered loans,'' proposed § 1003.2(o) provided that financial institutions must report: (1) all consumer-purpose home-equity lines of credit, which currently are optionally reported, and (2) all dwelling-secured commercial-purpose lines of credit, which currently are not reported. In short, the proposal provided for reporting of all dwelling-secured open-end lines of credit.[195]

As discussed below and in the section-by-section analyses of § 1003.2(e) and (g) and of § 1003.3(c)(10) and (12), the Bureau is finalizing mandatory reporting of open-end lines of credit, but with certain modifications from the proposal to: (1) Limit the number of institutions that will report; (2) limit the number of transactions that will be reported; (3) clarify certain reporting requirements for open-end lines of credit; and (4) clarify the definition of ''open-end line of credit.'' As discussed below, the Bureau believes that finalizing mandatory reporting of open-end lines of credit will provide information critical to HMDA's purposes. The Bureau understands that, notwithstanding the modifications described above, financial institutions may incur significant costs as a result of open-end line of credit reporting. However, the Bureau believes that the benefits of reporting justify the burdens.

The Bureau received a large number of comments about proposed § 1003.2(o). The vast majority of the comments discussed whether reporting of dwelling-secured open-end lines of credit should be mandatory and, if so, the scope of transactions that should be reported. A few commenters raised specific questions about the proposed definition of open-end line of credit. Consumer advocacy group commenters and researchers favored mandatory reporting, while the majority of industry commenters strongly opposed it. Among industry commenters that addressed mandatory reporting, most objected to reporting any open-end lines of credit. Some, however, specifically objected to mandatory reporting of commercial-purpose lines of credit. For organizational purposes, the Bureau addresses in this section-by-section analysis comments about: (1) Open-end line of credit coverage generally; (2) consumer-purpose line of credit coverage specifically; and (3) the definition of ''open-end line of credit'' in proposed § 1003.2(o).[196] Comments specific to commercial-purpose lines of credit are addressed in the section-by-section analysis of § 1003.3(c)(10) concerning commercial-purpose transactions.

Consumer advocacy group commenters and researchers favored mandatory reporting of all consumer-purpose open-end lines of credit. A large number of these commenters stated that data about open-end lines of credit would be valuable in assessing whether neighborhoods are receiving the full range of credit that they need on nondiscriminatory terms. The commenters stated that open-end lines of credit are much more widely used today than when HMDA was enacted, that problematic practices were associated with these products during the 2000s, that defaults on open-end credit lines contributed significantly to the foreclosure crises in many neighborhoods, and that open-end credit lines are important sources of home improvement financing, particularly in minority and immigrant communities. The commenters stated that fully understanding the mortgage market, including problems relating to overextension of credit in minority and immigrant neighborhoods, requires more detailed information about such transactions. They stated that information about home-equity products, for example, is important for understanding the total amount of debt and, in turn, default risk on a property.

A few consumer advocacy group commenters noted that open-end lines of credit, especially when fully drawn at account opening, can be interchangeable with closed-end products such as closed-end, subordinate-lien loans and cash-out refinancings. All such products provide borrowers with cash to do something, borrowers face the same risks of discrimination, and borrowers put their homes on the line in exchange for the funds. Commenters argued that requiring reporting of all dwelling-secured closed-end mortgage loans while continuing optional reporting of open-end lines of credit only would encourage more open-end lending, which in turn would decrease visibility into home-secured lending. Finally, one commenter noted that there is a lack of other publicly available information about dwelling-secured open-end lines of credit.

A minority of industry commenters either supported (or stated that they did not oppose) reporting consumer-purpose open-end lines of credit.[197] A few of these commenters argued that eliminating optional open-end line of credit reporting for consumer-purpose credit lines would reduce confusion and compliance costs by streamlining reporting obligations, or would improve data for HMDA users. Some industry commenters believed that data about consumer-purpose open-end lines of credit would serve HMDA's purposes. For example, one industry commenter acknowledged that, even though reporting open-end lines of credit would be burdensome, the data reported would provide additional information for fair lending use.

A large number of industry commenters objected to mandatory reporting of consumer-purpose open-end lines of credit; a few of these commenters suggested that only credit lines for home purchase, home improvement or refinancing should be reported. Commenters generally asserted that mandatory reporting would impose significant burdens for little benefit. Some argued that the burdens are what have kept most financial institutions from voluntarily reporting home-equity line of credit data under current Regulation C. Financial institutions of various types and sizes objected to mandatory reporting, but smaller- or medium-sized banks and their industry associations, and credit unions and their industry associations, generally expressed the greatest concerns, with some stating that open-end coverage was their primary concern with the proposal.

A primary concern among many financial institutions and industry associations, and particularly among many credit unions and credit union associations, was the operational costs and burdens of collecting and reporting data about open-end lines of credit. The most commonly cited operational difficulty was that financial institutions treat open-end lines of credit more like consumer loans than mortgage loans. Thus, financial institutions frequently originate and maintain data about open-end lines of credit on different computer systems than traditional mortgages, or use different software vendors. Commenters asserted that upgrading, replacing, or programming their systems

[195] 79 FR 51731, 51757–59 (Aug. 29, 2014).

[196] Many commenters used the common phrase ''home-equity lines of credit'' or ''HELOC'' to discuss all open-end mortgage lending. For simplicity and to align with the final rule's deletion of the defined term ''home-equity line of credit'' from Regulation C (*see* the section-by-section analysis of § 1003.2(h)), the Bureau hereinafter refers to covered (*i.e.,* dwelling-secured) open-end transactions simply as consumer- or commercial-purpose ''open-end lines of credit.''

[197] Industry commenters unanimously opposed reporting dwelling-secured commercial-purpose open-end lines of credit. The Bureau addresses those comments in the section-by-section analysis of § 1003.3(c)(10).

to enable open-end reporting would be difficult, expensive, and time-consuming. For example, financial institutions could use their mortgage loan origination systems for open-end reporting, but those systems are more expensive than the consumer systems typically used for credit lines. Commenters noted that, if financial institutions decided to keep separate systems for open- and closed-end credit, they would incur costs from programming and adding data fields in multiple systems, as well as from compiling and aggregating the data. For some (smaller) institutions, aggregating the data would mean manually entering data from two different systems.

Some commenters similarly observed that financial institutions use different departments, staff, and processes to originate open-end lines of credit and traditional mortgages. Commenters argued that open-end reporting would require financial institutions to incur costs to change their operations. For example, consumer lending staff either would need to be trained on HMDA reporting, or credit line originations would need to be moved from the consumer- to the mortgage-lending divisions of financial institutions. Some commenters also argued that reporting open-end lines of credit would require institutions to spend even more time and money on quality control and pre-submission auditing and would increase the risk of errors.

A number of commenters perceived other types of operational burdens. For example, a few commenters emphasized that the reporting burden would be particularly great because it would be entirely new even for most current HMDA reporters, so infrastructure would need to be built from the ground up. A few commenters similarly worried that some institutions that focus on open-end lending would become HMDA reporters for the first time and would incur significant start-up expenses to begin reporting. Finally, some commenters noted that aligning open-end lending with the MISMO data standards would be burdensome.

Many industry commenters argued that reporting all open-end line of credit applications and originations would increase institutions' ongoing HMDA reporting costs because their volume of reportable transactions would increase significantly. Some commenters asserted that the proposal underestimated the increase. Only a handful of commenters specifically estimated how many additional applications and originations they would be required to report. Estimated increases ranged from 20 percent to 200 percent per institution, or from hundreds to thousands of transactions, depending on the institution's size and volume of open-end mortgage lending. Many commenters, particularly smaller institutions, stated that they would need to hire additional staff, or that they would need to allocate more money to technology and staff, to handle the volume increase. A few commenters estimated that collecting data about all dwelling-secured open-end lines of credit would double or triple their ongoing compliance costs.

Several commenters also argued that reporting open-end lines of credit would be burdensome because gathering and accurately reporting information about credit lines would be difficult. For example, several industry associations stated that fewer data are gathered from consumers for small-dollar, open-end credit lines than for traditional mortgages, so lenders would need to create systems and procedures to collect the data. One commenter further noted that lines of credit are consumer loan products with different offerings by different institutions and are less standardized than traditional mortgages. Another commenter pointed out that open-end lines of credit are exempt from other regulations because they are different than closed-end loans. Some commenters stated that it would be burdensome to determine whether, and if so how, data points apply to open-end lines of credit. These commenters asserted that reporting open-end lines of credit thus could increase reporting errors. A few of these commenters were particularly concerned about the Bureau's proposal to require information about the first draw on a home-equity line of credit.

Many commenters argued that, in addition to being burdensome, reporting open-end lines of credit would have few benefits. First, many commenters asserted that mandatory reporting would exceed HMDA's mission and that the data reported would not serve HMDA's purposes. They argued that the data would not show whether financial institutions were meeting the housing needs of their communities because open-end lines of credit often are used for personal, non-housing-related, purposes (*e.g.,* vacations, education, and bill consolidation). Some commenters argued that data about credit lines used for non-housing-related purposes would produce misleading information about mortgage markets and that reporting should be limited, at most, to credit lines for home purchase, home improvement, or refinancing purposes. Others asserted that, even if a consumer intended to use a line of credit for a housing-related purpose, such as home improvement, financial institutions could not know at account opening whether the borrower ever actually drew on the account or, if so, whether the funds were used for housing or other purposes. The commenters thus asserted that the data reported would not be useful.

Some commenters argued that data about open-end lines of credit would not serve HMDA's fair lending purpose, because borrowers taking out open-end credit lines borrow against the equity in their homes and are not fully assessed as new borrowers. A few commenters asserted that it was inappropriate for the Bureau to require open-end reporting for market monitoring and research purposes or to address safety and soundness concerns. One commenter argued that open-end lines of credit are less risky for consumers than closed-end loans, because they often are smaller, with smaller payments that are easier to make. Another argued that the change was not required by the Dodd-Frank Act.

Many commenters also argued that mandating reporting of open-end lines of credit would be of little benefit, because certain current and proposed data points (*e.g.,* results from automated underwriting systems, some pricing data, and whether a transaction has non-amortizing features) would not apply to open-end credit. In addition, many commenters stated that mixing data about open-end, ''consumer-purpose'' transactions with traditional, closed-end mortgage loans will skew HMDA data and impair its integrity for HMDA users. Finally, a few commenters noted that the Board previously had considered and rejected mandatory reporting of open-end lines of credit; these commenters asserted that the Board had found that open-end reporting would not serve HMDA's purposes.

A few smaller financial institutions, credit unions, and credit union leagues predicted that they or other small institutions could be forced to stop offering open-end lines of credit. Others argued that adding open-end line of credit reporting would strain the limited resources of smaller banks and credit unions already struggling with burdensome compliance requirements, would inhibit such institutions from serving their customers, would increase costs to consumers and credit union members, or could force such institutions to exit the market for home-equity lines of credit, thereby reducing consumers' low-cost credit options.

Commenters suggested various alternatives to mandatory reporting of open-end lines of credit. Some urged the

Bureau to maintain optional reporting, while others asserted that open-end lines of credit should be excluded from reporting altogether. Some argued that smaller- or medium-sized banks and credit unions should be exempt from reporting, because small institutions did not cause the financial crisis and reporting would burden them unfairly. As noted, a few commenters urged the Bureau to require reporting only of open-end lines of credit for home purchase, home improvement, or refinancing purposes.

The Bureau has considered the comments concerning mandatory reporting of open-end lines of credit, and the Bureau is finalizing § 1003.2(o) largely as proposed, but without covering certain commercial-purpose lines of credit.[198] The Bureau is finalizing separate open-end line of credit coverage thresholds under § 1003.2(g) and § 1003.3(c)(12) to ensure that only financial institutions with a minimum level of open-end line of credit originations will be required to report.[199] The Bureau acknowledges that, even with these modifications, many financial institutions may incur significant costs to report their open-end lines of credit, and that one-time costs may be particularly large. However, the Bureau believes that the benefits of mandatory reporting justify those costs.

As discussed in the proposal, the Bureau believes that including dwelling-secured lines of credit within the scope of Regulation C is a reasonable interpretation of HMDA section 303(2), which defines ''mortgage loan'' as a loan secured by residential real property or a home improvement loan. The Bureau interprets ''mortgage loan'' to include dwelling-secured lines of credit, as they are secured by residential real property and they may be used for home improvement purposes.[200] Moreover, pursuant to section 305(a) of HMDA, the Bureau believes that requiring reporting of all dwelling-secured, consumer-purpose open-end lines of credit is necessary and proper to effectuate the purposes of HMDA and to prevent circumvention of evasion thereof.[201] HMDA and Regulation C are designed to provide citizens and public officials sufficient information about mortgage lending to ensure that financial institutions are serving the housing needs of their communities, to assist public officials in distributing public sector investments, and to identify possible discriminatory lending patterns. The Bureau believes that collecting information about all dwelling-secured, consumer-purpose open-end lines of credit serves these purposes.[202]

First, financial institutions will know, and the data will show, when an open-end line of credit is being taken out for the purpose of purchasing a home. This data alone will serve HMDA's purposes by providing information about how often, on what terms, and to which borrowers' institutions are originating open-end lines of credit to finance home purchases. Although many commenters argued that dwelling-secured lines of credit are used for purposes unrelated to housing, in the years leading up to the financial crisis, they often were made and fully drawn more or less simultaneously with first-lien home-purchase loans (*i.e.,* as piggybacks), essentially creating high loan-to-value ratio home-purchase transactions that were not visible in the HMDA dataset.[203] Some evidence suggests that piggyback lending may be on the rise again now that the market has begun to recover from the crisis.[204]

Second, the data will help to understand how often, on what terms, and to which borrowers institutions are originating open-end lines of credit for home improvement purposes. It is true, as many commenters argued, that funds from lines of credit may be used for many purposes, and that lenders cannot track how funds ultimately are used. However, the same is true of funds obtained through cash-out refinancings, which currently are reported under Regulation C, and through closed-end home-equity loans and reverse mortgages, some of which are reportable today and all of which will be reportable under the final rule (unless an exception applies).[205] Funds from all of these products may be used for personal purposes, but they may also be used for home improvement (and home purchase) purposes. Citizens and public officials long have analyzed data about such products to understand how financial institutions are satisfying borrowers' needs for home improvement lending.[206]

The Bureau believes that financial institutions serve the housing needs of their communities not only by providing fair and adequate financing to purchase and improve homes, but also by ensuring that neither individual borrowers nor particular communities are excessively overleveraged through open-end home-equity borrowing. The Bureau thus declines to limit reporting of open-end mortgage lending to transactions for home purchase, home improvement, or refinancing purposes, as some commenters suggested. Open-end home-equity lending, regardless of how the funds are used, liquefies equity that borrowers have built up in their homes, which often are their most important assets. Borrowers who take out dwelling-secured credit lines increase their risk of losing their homes to foreclosure when property values decline.

Indeed, as discussed in the proposal, open-end line of credit originations expanded significantly during the mid-2000s, particularly in areas with high home-price appreciation, and research indicates that speculative real estate investors used open-end lines of credit to purchase non-owner-occupied investment properties, which correlated with higher first mortgage defaults and home-price depreciation.[207] In short, overleverage due to open-end mortgage lending and defaults on dwelling-secured open-end lines of credit contributed to the foreclosure crises that many communities experienced in the late 2000s. Communities' housing needs would have been better served if these crises could have been avoided (or remedied more quickly).[208] Had open-

[198] *See* the section-by-section analysis of § 1003.3(c)(10).

[199] *See* the section-by-section analyses of § 1003.2(g)(1)(v)(B) and (2)(ii)(B) and of § 1003.3(c)(12).

[200] *See* 79 FR 51731, 51758–59 (Aug. 29, 2014).

[201] *See id.* at 51759.

[202] Contrary to some commenters' assertions, the Board did not find that open-end reporting would not serve HMDA's purposes; rather, the Board in 2002 determined that the burdens of open-end reporting did not justify the benefits at that time.

[203] *See, e.g.,* Donghoon Lee et al., Fed. Reserve Bank of New York, Staff Report No. 569, *A New Look at Second Liens,* at 11 (Aug. 2012) (estimating that, prior to the crisis, as many as 45 percent of purchasers in coastal and bubble areas used a piggyback loan to subsidize the down payment on a first mortgage, hoping to eliminate the need for mortgage insurance).

[204] *See, e.g.,* Joe Light and AnnaMaria Andriotis, *Borrowers Tap Their Homes at a Hot Clip,* Wall St. J., May 29, 2014), *available at http://www.wsj.com/articles/borrowers-tap-their-homes-at-a-hot-clip-1401407763* (discussing the recent increase in home-equity line of credit lending and noting that some lenders have begun to bring back piggyback loans, which ''nearly vanished'' during the mortgage crisis).

[205] As discussed in the section-by-section analysis of § 1003.2(q), commenters raised some of the same concerns about reverse mortgages. The final rule requires reporting of all reverse mortgages for the reasons discussed in the section-by-section analysis of § 1003.2(q).

[206] For example, financial institutions currently report closed-end home-equity loans when borrowers indicate that some or all of the funds will be used for home improvement purposes. Financial institutions, however, do not track what portion (if any) of the funds ultimately are used for that purpose. No data reporting regime can provide perfect information; the information that is reported nevertheless assists in serving HMDA's purposes.

[207] *See* 79 FR 51731, 51757 (Aug. 29, 2014).

[208] As noted in the proposal, many public and private mortgage relief programs encountered

end line of credit data been reported in HMDA, the public and public officials could have had a much earlier warning of potential risks. The Bureau believes that obtaining data about open-end mortgage lending remains critical, with open-end lending on the rise once again as home prices have begun to recover from the financial crisis.[209]

Finally, mandatory reporting of open-end lines of credit will help to understand whether all dwelling-secured credit is extended on equitable terms. It may be true, as some commenters asserted, that borrowers are not necessarily evaluated for open-end credit in the same manner as for traditional mortgage loans and that adequate home equity is the key consideration. Lending practices during the financial crisis demonstrated, however, that during prolonged periods of home-price appreciation, lenders became increasingly comfortable originating home-equity products to borrowers with less and less equity to spare. The more leveraged the borrower, the more at risk the borrower is of losing his or her home. Obtaining data about open-end mortgage lending could show, during future housing booms, whether such risky lending practices are concentrated among certain borrowers or communities and permit the public and public officials to respond appropriately. In this and other ways, data about open-end lines of credit will help to assist in identifying possible discriminatory lending patterns.

Certain commenters pointed out that several data points will not apply to open-end lines of credit. However, the Bureau believes that the public and public officials will receive valuable information from all of the data points that do apply. With applicable data points, HMDA users will have, for the first time, good information about which financial institutions are originating open-end lines of credit, how frequently, on what terms, and to which borrowers. HMDA users will be able to evaluate whether, and how, financial institutions are using open-end lines of credit to serve the housing needs of their communities. Moreover, as discussed below, the final rule adopts several measures to minimize the burdens to financial institutions of determining whether and how data points apply to open-end lines of credit.[210] The final rule also requires financial institutions to flag whether a transaction is for closed- or open-end credit. *See* § 1003.4(a)(37). This flag addresses commenters' concerns about commingling information about closed-end mortgage loans and open-end lines of credit.[211]

Not only will data about open-end lines of credit help to serve HMDA's purposes, but the Bureau believes that expanding the scope of Regulation C to include dwelling-secured, consumer-purpose lines of credit is necessary to prevent evasion of HMDA. As discussed in the proposal, consumer-purpose open-end lines of credit may be interchangeable with consumer-purpose closed-end home-equity products, many of which currently are reported, and all of which will be reported, under final § 1003.2(d) and (e). The Bureau believes that, if open- and closed-end consumer-purpose home-equity products are treated differently under the final rule, there is a heightened risk that financial institutions could steer borrowers to open-end products to avoid HMDA reporting.[212] The Bureau believes that steering could be particularly attractive (and risky for borrowers) given that open-end lines of credit are not subject to the Bureau's 2013 ATR Final Rule and currently are subject to less complete disclosure requirements than closed-end products under Regulation Z. The Bureau believes that some financial institutions likely would attempt to evade Regulation C if mandatory reporting were not adopted for open-end lines of credit. The Bureau thus has determined that, in addition to being a reasonable interpretation of the statute, requiring reporting of dwelling-secured, consumer-purpose open-end lines of credit also is authorized as an adjustment that is necessary and proper to prevent evasion of HMDA.

The Bureau acknowledges that reporting open-end lines of credit will impose one-time and ongoing operational costs on reporting institutions. The proposal estimated that the one-time costs of modifying processes and systems and training staff to begin open-end line of credit reporting likely would impose significant costs on some institutions, and that institutions' ongoing reporting costs would increase as a function of their open-end lending volume.[213] As discussed above, many commenters emphasized both these one-time and ongoing costs.[214] The Bureau acknowledges these costs and understands that many institutions' reportable transaction volume many increase significantly.

As discussed in the proposal, in the section-by-section analysis of § 1003.2(g), and in part VII below, the Bureau has faced challenges developing accurate estimates of the likely impact on institutional and transactional coverage of mandatory reporting of open-end lines of credit due to the lack of available data concerning open-end lending. These challenges affect the Bureau's ability to develop reliable one-time and ongoing cost estimates, as well, because such costs are a function of both the number of institutions reporting open-end data and the number of transactions each of those institutions reports.[215] After careful analysis, the

unique difficulties assisting distressed borrowers who had obtained subordinate-lien loans, including dwelling-secured open-end lines of credit. *See* 79 FR 51731, 51757 (Aug. 29, 2014).

[209] *See, e.g.,* Press Release, Equifax, *First Quarter Mortgage Originations Soar* (June 29, 2015), *http://investor.equifax.com/releasedetail.cfm?ReleaseID=919892* (stating that more than 285,700 new accounts were originated during the first quarter of 2015, a year-over-year increase of 21.2 percent and the highest level since 2008); *CBA, Icon Market Analysis Finds Growing Consumer Demand for Home Equity Lines of Credit* (Mar. 23, 2015) (home-equity line of credit originations have increased in each of the past 13 quarters, with annual growth of nearly 22 percent in both 2013 and 2014 and an increase of 36 percent for the first quarter of 2015 versus the first quarter of 2014); Joe Light and AnnaMaria Andriotis, *Borrowers Tap Their Homes at a Hot Clip,* Wall St. J., May 29, 2014), *available at http://www.wsj.com/articles/borrowers-tap-their-homes-at-a-hot-clip-1401407763* (quoting the chief economist of Equifax Inc. that lenders had begun marketing more aggressively in areas where home prices had recovered and that originations had picked up as consumers had returned to home improvement projects postponed during the crisis).

[210] Some commenters were concerned that financial institutions would be required to report the portion of the open-end line of credit that would be used for home purchase, home improvement, or refinancing purposes. However, the final rule, like the proposal, requires financial institutions to report the total amount of the line at account opening. *See* the section-by-section analysis of § 1003.4(a)(7).

[211] Indeed, commingling of information is more a of problem under existing Regulation C than it will be under the final rule, because there currently is no way for users of HMDA data to distinguish information about optionally reported open-end lines of credit from the rest of the HMDA dataset.

[212] *See* 79 FR 51731, 51758 (Aug. 29, 2014). The Bureau believes the risk of steering is highlighted by lending practices described during the Board's 2010 Hearings; for example, one individual described how a loan officer persuaded her to open a home-equity line of credit simultaneously with her primary mortgage, even though she had not inquired about or been interested in opening a line of credit. *See id.*

[213] *See id.* at 51825–26, 51836–37 (estimating the one-time and ongoing costs, respectively, to low-, medium-, and high-complexity institutions of reporting open-end lines of credit, all dwelling-secured home-equity loans, and reverse mortgages).

[214] Certain commenters argued that the proposal underestimated the costs of reporting open-end lines of credit. Those comments are addressed in part VII, along with the methodology the Bureau has used to estimate the costs of open-end reporting, and the challenges the Bureau has faced in developing its estimates.

[215] The Bureau solicited information that would assist it in making these estimates and in determining whether the estimates provided in the proposal were accurate, but commenters generally did not provide responsive data. *See* 79 FR 51731,

Continued

Bureau has developed estimates of open-end line of credit origination volumes by institutions and, as discussed in part VII, has used those estimates to estimate both the overall one-time and overall ongoing costs to institutions of open-end reporting.[216] The Bureau expects that both one-time and ongoing costs will be larger for more complex financial institutions that have higher open-end lending volume and that will need to integrate separate business lines, data platforms, and systems, to begin reporting open-end lending. Precisely because no good source of publicly available data exists concerning dwelling-secured open-end lines of credit, it is difficult to predict the accuracy of the Bureau's cost estimates, but the Bureau believes that they are reasonably reliable and acknowledges that, for many lenders, the costs of open-end reporting may be significant. As discussed further below, the final rule revises the proposal in several ways to reduce open-end reporting costs for certain financial institutions.[217]

A few commenters argued that reporting open-end lines of credit will be difficult because financial institutions collect less information from consumers when originating open-end products than when originating traditional, closed-end mortgage loans. In part, this may be because open-end lines of credit are not subject to the Bureau's 2013 ATR Final Rule. However, the Bureau believes that this lack of substantive regulation only strengthens the need for open-end line of credit reporting in HMDA so that the public and policymakers have sufficient data about the dwelling-secured open-end credit market to understand whether lenders offering open-end products are serving the housing needs of their communities.

Methods To Reduce the Burden of Open-End Line of Credit Reporting

The Bureau is finalizing mandatory reporting of dwelling-secured consumer-purpose open-end lines of credit because of the many benefits discussed above. The Bureau is adopting several measures to address commenters' concerns about the burdens of implementing open-end reporting and their concerns about ongoing open-end reporting costs.

Institutional coverage threshold. As discussed in the section-by-section analysis of § 1003.2(g), the Bureau is finalizing a separate, open-end institutional coverage threshold to determine whether an institution is a HMDA reporter. As discussed in that section, the Bureau concluded that its proposed institutional coverage test achieved appropriate market coverage of closed-end mortgage lending. However, in light of the costs associated with open-end reporting, the Bureau was concerned that finalizing the proposed institutional coverage test would have required institutions with sufficient closed-end—but very little open-end—mortgage lending to incur costs to begin open-end reporting. The Bureau thus is adopting an institutional coverage test that covers a financial institution only if (in addition to meeting the other criteria under § 1003.2(g)) it originated either (1) 25 or more closed-end mortgage loans or (2) 100 or more open-end lines of credit in each of the two preceding calendar years. As discussed in the section-by-section analysis of § 1003.2(g), the Bureau believes that the 25 closed-end and 100 open-end loan-volume origination tests appropriately balance the benefits and burdens of covering institutions based on their closed- and open-end mortgage lending, respectively. Specifically, as discussed further in the section-by-section analysis of § 1003.2(g) and in part VII, the Bureau estimates that adopting a 100-open-end line of credit threshold will avoid imposing the burden of establishing open-end reporting on approximately 3,000 predominantly smaller-sized institutions with low open-end lending compared to the proposal, while still requiring reporting of a significant majority of dwelling-secured, open-end line of credit originations. As discussed in those sections, the Bureau also believes that all institutions that will be required to report open-end line of credit data are current HMDA reporters.

Transactional coverage threshold. The final rule also adds in § 1003.3(c)(12) a transactional coverage threshold for open-end mortgage lending. The transactional coverage threshold is designed to work in tandem with the open-end institutional coverage threshold in § 1003.2(g). Specifically, § 1003.3(c)(12) provides that a financial institution that originated fewer than 100 open-end lines of credit in each of the preceding two calendar years is not required to report data about its open-end lines of credit, even if the financial institution otherwise is a financial institution under § 1003.2(g) because of its closed-end lending (*i.e.,* even if the institution will be reporting data about closed-end mortgage loans).[218]

Effective date. The Bureau is mindful that most financial institutions have never reported open-end mortgage lending data, that collecting and reporting such data for the first time will be time-consuming and complex, and that implementation costs may be sensitive to the time permitted to complete the required changes. The Bureau thus is providing financial institutions approximately two years to complete the changes necessary to begin collecting the data required under the final rule, including data about open-end lines of credit. As noted in part VI, financial institutions will report the data required under the final rule for actions taken on covered loans on or after January 1, 2018.

Other efforts to mitigate burden. Some of the anticipated burdens of reporting open-end lines of credit also likely will be mitigated by the operational

51754 (Aug. 29, 2014). Some commenters argued, based on their particular institution's lending volume, that the Bureau underestimated the number of open-end lines of credit that institutions would be required to report. As discussed in part VII, the proposal's and the final rule's estimates of transaction volumes are averages. Thus, they may be low for some financial institutions and high for others. Moreover, some industry commenters did not distinguish between consumer- and commercial-purpose credit lines. As discussed in the section-by-section analysis of § 1003.3(c)(10), the final rule requires financial institutions to report only a subset of commercial-purpose lines of credit. Thus, it is possible that some commenters overestimated the number of open-end transactions that they would report under the final rule. Based on available information, including the feedback provided by commenters, the Bureau cannot definitively conclude whether the proposal significantly underestimated reportable open-end line of credit volume as a general matter.

[216] As noted in part VII, with currently available sources, the Bureau can reliably estimate: (1) Total open-end line of credit originations in the market and (2) subordinate-lien open-end line of credit originations by credit union. Both of these estimates are under- and over-inclusive of the open-end transactions that are reportable under the final rule. Neither includes applications that do not result in originations, which will be reported, and both include commercial-purpose lines of credit, many of which will be excluded under final § 1003.3(c)(10). For banks and thrifts, the Bureau's estimates of open-end line of credit originations have been extrapolated from several data sources using simplified assumptions and may not accurately reflect open-end lending by such institutions.

[217] The Bureau does not believe that open-end reporters will incur burden from aligning with MISMO. As discussed in part VII, the Bureau did not propose to require, and the final rule does not require, any financial institution to use or become familiar with the MISMO data standards. Rather, the rule merely recognizes that many financial institutions are already using the MISMO data standards for collecting and transmitting mortgage data and uses similar definitions for certain data points to reduce burden for those institutions.

[218] For balance, the Bureau is adopting a parallel transactional coverage threshold for closed-end mortgage loans in § 1003.3(c)(11). Under § 1003.3(c)(11), a financial institution that originated fewer than 25 closed-end mortgage loans in each of the preceding two calendar years is not required to report data about its closed-end mortgage loans, even if the financial institution otherwise is a financial institution under § 1003.2(g) because of its open-end mortgage lending (*i.e.,* even if the institution will be reporting data about open-end lines of credit).

enhancements and modifications that the Bureau is exploring for HMDA reporting generally. For example, as discussed elsewhere in the final rule, the Bureau is improving the edit and submission process, which should reduce reporting burden for all covered loans. While these improvements will not reduce the costs that financial institutions will incur to adapt their systems and processes to report open-end lines of credit, they should reduce ongoing costs to institutions by reducing the amount of time financial institutions may spend submitting and editing this data.

Clarifying which data points apply to open-end lines of credit, and how they apply, also will alleviate compliance burden. For example, commenters expressed concern about reporting information about initial draws under open-end lines of credit. As discussed in the section-by-section analysis of § 1003.4(a)(39), the Bureau is not finalizing that data point, in part in response to commenters' concerns. The final rule also provides that several other data points do not apply to open-end lines of credit.[219] Finally, the final rule provides guidance about how several data points apply to open-end lines of credit.[220]

Open-End Line of Credit Definition

The Bureau is adopting a few technical revisions to streamline § 1003.2(o) and to align it with revisions made elsewhere in the final rule. Proposed § 1003.2(o) provided that an open-end line of credit was a dwelling-secured transaction that was neither a closed-end mortgage loan under proposed § 1003.2(d) nor a reverse mortgage under proposed § 1003.2(q). To align with lending practices, to streamline the definitions of closed-end mortgage loan and open-end line of credit, and to streamline § 1003.4(a)(36) (which requires financial institutions to identify reverse mortgages), the final rule eliminates the mutual exclusivity between open-end lines of credit and reverse mortgages. Final § 1003.2(o) thus provides that an open-end line of credit is an extension of credit that (1) is secured by a lien on a dwelling; and (2) is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11).

Consistent with § 1003.2(d), final § 1003.2(o) provides that an open-end line of credit is a dwelling-secured ''extension of credit.'' New comment 2(o)–2 clarifies the meaning of the term ''extension of credit'' for open-end transactions for purposes of § 1003.2(o). It states that financial institutions may cross-reference the guidance concerning ''extension of credit'' under § 1003.2(d) and comment 2(d)–2, and it provides an example of an open-end transaction that is not an extension of credit and thus not covered under the final rule. It further clarifies that, for purposes of § 1003.2(o), each draw on an open-end line of credit is not an extension of credit. Thus, financial institutions report covered open-end lines of credit only once, at account opening.

2(p) Refinancing

Prior to the proposal, the Bureau received feedback that Regulation C's definition of refinancing was confusing. To address those concerns, the Bureau proposed § 1003.2(p) and related commentary. Proposed § 1003.2(p) streamlined the existing definition of refinancing by moving the portion of the definition that addresses institutional coverage to proposed § 1003.2(g), the definition of ''financial institution.'' For the reasons discussed below, the Bureau is adopting § 1003.2(p) largely as proposed, and is adopting revised commentary to § 1003.2(p) to provide additional guidance about the types of transactions that are refinancings under Regulation C.[221]

The Bureau received a number of comments on proposed § 1003.2(p) and its accompanying commentary from financial institutions, industry trade associations, and other industry participants. The comments generally supported the Bureau's proposed revisions, but several commenters suggested different definitions or additional clarifications.

The Bureau received only a few comments addressing proposed § 1003.2(p)'s regulation text, all from industry participants. One commenter specifically supported the Bureau's proposal to move the ''coverage prong'' of § 1003.2(p) to the definition of financial institution in § 1003.2(g) and stated that the move would reduce confusion. Another commenter suggested that the Bureau could reduce compliance costs by aligning the definition of refinancing in proposed § 1003.2(p) with Regulation Z § 1026.37(a)(9), so that a refinancing is any transaction that is not a home purchase loan and that satisfies and replaces an existing obligation secured by the same property. For the reasons set forth in the section-by-section analysis of § 1003.4(a)(3), the final rule does not include this modification.

The Bureau is finalizing comment 2(p)–1 generally as proposed, but with several non-substantive revisions for clarity. In addition, final comment 2(p)–1 is modified to provide that a refinancing occurs only when the original debt obligation has been satisfied and replaced by a new debt obligation, based on the parties' contract and applicable law. This is consistent with the definition of refinancing in Regulation Z § 1026.20(a) and comment 20(a)–1. The comment further specifies that satisfaction of the original lien, as distinct from the debt obligation, is irrelevant in determining whether a refinancing has occurred. A few commenters requested that the Bureau provide additional guidance concerning loan modifications and renewals, stating that examiners provide inconsistent guidance about whether to report renewal transactions when there is no new note. Accordingly, final comment 2(p)–1 specifies that a new debt obligation that renews or modifies the terms of, but does not satisfy and replace, an existing debt obligation is not a refinancing under § 1003.2(p).[222]

As discussed in the section-by-section analysis of § 1003.2(d), the final rule considers a transaction completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under N.Y. Tax Law § 255 such that the borrower owes reduced or no mortgage recording taxes to be an ''extension of credit'' and therefore reportable. The final rule adds new comment 2(p)–2 to provide that a transaction is considered a refinancing under § 1003.2(p) where: (1) The

[219] *See* § 1003.4(a)(4) (preapproval request); § 1003.4(a)(18) (origination charges); § 1003.4(a)(19) (discount points); and § 1003.4(a)(20) (lender credits).

[220] *See* § 1003.4(a)(7)(ii) and comment 4(a)(7)–6 (loan amount); comments 4(a)(12)–3 and –4 (rate spread); § 1003.4(a)(17) (total points and fees); comment 4(a)(25)–4 (amortization term); and comment 4(a)(26)–1 (introductory rate).

[221] Prior to the proposal and in public comments on the proposal, the Bureau received feedback that agricultural-purpose refinancings should be excluded from Regulation C's coverage. The final rule clarifies that all agricultural-purpose transactions, whether for home purchase, home improvement, refinancing, or some other purpose, are excluded transactions. *See* the section-by-section analysis of § 1003.3(c)(9).

[222] To further address uncertainty about the types of transactions that are reportable under Regulation C, the final rule also clarifies in the commentary to § 1003.2(d) (definition of closed-end mortgage loan) and (o) (definition of open-end line of credit) that loan modifications and renewals are not ''extensions of credit'' under Regulation C and thus are not reportable transactions under the final rule. *See* the section-by-section analysis of § 1003.2(d) and (o).

transaction is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under N.Y. Tax Law § 255 such that the borrower owes reduced or no mortgage recording taxes, and (2) but for the agreement the transaction would have met the definition of a refinancing under § 1003.2(p).

The Bureau received one comment addressing proposed comment 2(p)–2. The comment requested that the Bureau eliminate from the definition of refinancing the requirement that both the existing and the new debt obligations be dwelling-secured, because it is burdensome to confirm whether the new transaction pays off an existing mortgage. This requirement, however, is consistent with Regulation Z's definition of refinancing. The Bureau notes that, under the final rule, whether a consumer-purpose transaction meets this test (or, for that matter, whether such a transaction otherwise is a refinancing) no longer determines whether the transaction is a covered loan.[223] Thus, for consumer-purpose transactions, when a financial institution originates a dwelling-secured debt obligation that satisfies and replaces an existing debt obligation, the financial institution no longer needs to determine whether the existing debt obligation was dwelling-secured to know that the transaction is HMDA-reportable. The financial institution will, however, need to determine whether the existing debt obligation was dwelling-secured to determine whether to report the transaction as a refinancing or an ''other purpose'' transaction. See § 1003.4(a)(3).

The Bureau is finalizing proposed comment 2(p)–3 generally as proposed, with minor modifications for clarity, and renumbered as comment 2(p)–4. The Bureau received a few comments addressing proposed comment 2(p)–3. One financial institution specifically supported the proposed commentary, but another asked for additional guidance for situations, such as a divorce, where only one of the original borrowers is obligated on the new loan. As proposed, comment 2(p)–3 addressed this scenario. It specified that, if one debt obligation to two borrowers was satisfied and replaced by a new debt obligation to either one of the original borrowers, then the new obligation was a refinancing, assuming the other requirements of proposed § 1003.2(p) were met. Proposed comment 2(p)–3 also specified that, if two spouses were divorcing, and a debt obligation of only one spouse was satisfied and replaced by a new debt obligation of only the other spouse, then the transaction was not a refinancing under proposed § 1002.3(p). Final comment 2(p)–4 retains these examples but revises and expands them for clarity.

Several commenters asked whether two or more new loans that are originated to satisfy and replace one existing loan are refinancings. The final rule adopts new comment 2(p)–5 to clarify that each of the two new obligations is a refinancing if, taken together, they satisfy and replace the existing obligation. Comment 2(p)–5 also specifies that the same rule applies when one new loan satisfies and replaces two or more existing debt obligations.

The final rule adds new comment 2(p)–6 to clarify that a transaction that meets the definition of a refinancing may also be used for other purposes. The comment provides an illustrative example and specifies that instructions for reporting a multiple-purpose covered loan are in the commentary to § 1003.4(a)(3).

2(q) Reverse Mortgage

Proposed § 1003.2(q) added a ''reverse mortgage'' definition to Regulation C. Regulation C currently requires financial institutions to report a reverse mortgage if it otherwise is reportable as a home purchase loan, a home improvement loan, or a refinancing. The current regulation, however, does not define ''reverse mortgage'' or require financial institutions to identify which applications or loans are for reverse mortgages. The proposed definition generally provided that a reverse mortgage is a reverse mortgage transaction as defined under Regulation Z § 1026.33(a). Taken together with proposed § 1003.2(e) (definition of ''covered loan''), proposed § 1003.2(q) effectively provided that all reverse mortgage transactions, regardless of their purpose, were covered loans and HMDA-reportable.

The Bureau received a number of comments about proposed § 1003.2(q) and coverage of reverse mortgages. While consumer advocacy group commenters generally supported the proposal, industry participants that discussed proposed § 1003.2(q) generally opposed expanding coverage of reverse mortgages. For the reasons discussed below, the Bureau is finalizing § 1003.2(q) substantially as proposed, with minor technical revisions.

A number of consumer advocacy groups supported the Bureau's proposed reverse mortgage definition. They stated that having data about all reverse mortgages would be valuable in assessing whether the neighborhoods that they serve are receiving the full range of credit that the neighborhoods need and would be appropriate to ensure an adequate understanding of the mortgage market. These commenters stated that publicly available data about all reverse mortgages will be essential in the coming years as the country's population ages and older consumers, many of whom are cash-poor but own their homes outright, may increasingly use home equity for living expenses and other purposes. The commenters noted that reverse mortgages often are not reported under current Regulation C because they often are not for the purpose of home purchase, home improvement, or refinancing.

The commenters further noted that Regulation C's reverse mortgage data lack information about open-end, reverse mortgage transactions. Having data about ''other purpose'' reverse mortgages, as well as open-end reverse mortgages, will help to determine how the housing needs of seniors are being met. This is particularly true because poorly structured or higher-priced reverse mortgages can result in financial hardship to seniors. The commenters also noted the general importance of having data about housing-related transactions to older consumers, who may be particularly vulnerable to predatory or discriminatory lending practices. Several of these commenters urged the Bureau to adopt a flag to identify reverse mortgages. One industry commenter generally supported proposed § 1003.2(q). The commenter agreed that the proposed definition of reverse mortgage was appropriate because it aligned with Regulation Z.

A number of industry commenters, including trade associations, several financial institutions, and a compliance professional, disagreed with the Bureau's proposal to require reporting of all reverse mortgages. Some of these commenters asserted that Regulation C should not apply to reverse mortgages at all, or that reverse mortgages are outside the scope of HMDA. Others argued that the Bureau should maintain current coverage of reverse mortgages and require them to be reported only if they are for home purchase, home improvement, or refinancing. The commenters generally argued that reporting all reverse mortgages would create new costs for financial

[223] As discussed in the section-by-section analysis of § 1003.3(c)(10), Regulation C's existing purpose-based coverage test applies to business- or commercial-purpose transactions under the final rule.

institutions and that the burdens did not justify the benefits.

Regarding burden, commenters stated that reverse mortgage lenders already are exiting the market because of regulatory demands and uncertainties with reverse mortgages, and that requiring reporting of all reverse mortgages under HMDA would continue that trend. A few commenters argued that data for reverse mortgages is kept on separate systems from traditional mortgage loans and that it would be costly and time-consuming to upgrade systems for reporting. Some commenters stated that the burden would be particularly great for reverse mortgage lenders that make fewer than 100 mortgages in a year.

These commenters argued that the benefits of reporting all reverse mortgages would be small. They stated that financial institutions already report the necessary data about reverse mortgages (*i.e.,* data about closed-end reverse mortgages for home purchase, home improvement, or refinancing). They stated that HMDA does not require data about other types of reverse mortgages, which are used for purposes unrelated to housing finance. They also stated that many of HMDA's data points (*e.g.,* points and fees and debt-to-income ratio) do not apply, or apply differently, to reverse mortgages than to traditional mortgages. The commenters asserted that the data reported thus would have large gaps and would not clarify whether financial institutions are meeting the housing needs of their communities. Some commenters noted that the reverse mortgage market currently is small and that many financial institutions do not offer reverse mortgages, so the value of the data reported would be low.

Some commenters stated that comparing reverse mortgage data with data for traditional mortgage loans or lines of credit would lead only to inaccurate conclusions about reverse mortgage originations because, for example, reverse mortgages are underwritten and priced differently than other mortgages and are for different purposes. Other commenters noted that the Bureau has exempted reverse mortgages from other rulemakings, such as the 2013 ATR Final Rule and the Bureau's Integrated Mortgage Disclosures rule (2013 TILA–RESPA Final Rule),[224] given their differences from traditional mortgages. Finally, one commenter noted that there would be no harm in the Bureau delaying reverse mortgage reporting until after the Bureau has reviewed and considered other reverse mortgage rulemakings.

The Bureau is finalizing § 1003.2(q) generally as proposed, with minor technical revisions. The Bureau acknowledges that requiring reporting of data on additional transactions will impose burden on financial institutions, but the Bureau believes that the benefits of reporting justify the burdens. As discussed in the proposal and in comments from consumer advocacy groups, the reverse mortgage market currently may be small, but it may become increasingly important as the country's population ages.[225] While reverse mortgages may provide important benefits to homeowners, they also pose several risks to borrowers, including that they may be confusing, may have high costs and fees, and may result in elderly borrowers or their heirs or non-borrowing spouses losing their homes to foreclosure.[226] As discussed in the proposal, communities have faced risks due to reverse mortgage lending, particularly communities with sizable populations of borrowers eligible for reverse mortgages programs,[227] and many State officials have focused on harmful practices associated with reverse mortgage lending.[228]

Information on all reverse mortgages, regardless of purpose, would help communities understand the risks posed to local housing markets, thereby providing the citizens and public officials of the United States with sufficient information to enable them to determine whether financial institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, private institutions and nonprofit organizations, as well as local, State, and Federal programs, traditionally have facilitated or engaged in reverse mortgage lending. However, the proprietary market for reverse mortgages has substantially declined in recent years. Thus, requiring improved information regarding all reverse mortgages would assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.

Indeed, it is particularly important to obtain better information about the reverse mortgage market because it serves older consumers, a traditionally vulnerable population. State officials provided feedback during the Board's 2010 Hearings that expanding the transactional coverage of Regulation C to include all reverse mortgages would assist in the identification of discriminatory and other potentially harmful practices against this protected class.[229] In this regard, the Bureau notes that requiring reporting of all reverse mortgages dovetails with the Dodd-Frank Act's requirement to report age for all covered loans. The Bureau believes that the currently small size of the market, and the fact that the Bureau may address reverse mortgages in future, substantive rulemakings, further support the decision to require reverse mortgage reporting as soon as possible. The flow of information to the public and policymakers will better position them to identify housing needs and market developments as they occur.

The Bureau acknowledges that, as commenters observed, reverse mortgages are underwritten and priced differently than other mortgages, some data points apply differently to reverse mortgages, and some do not apply at all. However, this is just as true for the reverse mortgages that currently are reported (and that most commenters agree should be reported) as for the reverse mortgages that will be added under the final rule. Where possible, the

[224] 78 FR 79730 (Dec. 31, 2013).

[225] *See* 79 FR 51731, 51759 (Aug. 29, 2014) (citing Lisa Prevost, *Retiring on the House: Reverse Mortgages for Baby Boomers,* N.Y. Times, Feb. 13, 2014, at RE5, *available at http://www.nytimes.com/2014/02/16/realestate/reverse-mortgages-for-baby-boomers.html?_r=0*). *See also* Nora Caley, *Aging In Place, With A Loan: The State of the Reverse Mortgage Industry,* Mortgage Orb, Vol. 2, Issue 17 (May 8, 2013), *http://www.mortgageorb.com/e107_plugins/content/content.php?content.13765.*

[226] *See* 79 FR 51731, 51759 (Aug. 29, 2014) (citing Consumer Fin. Prot. Bureau, Report to Congress on Reverse Mortgages 110–145 (June 28, 2012)), *http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf*).

[227] *See id.* (citing Susan Taylor Martin, *Complexities of Reverse Mortgages Snag Homeowners,* Tampa Bay Times, May 30, 2014; Kevin Burbach & Sharon Schmickle, *As State Ages, Minnesota Braces for Problems With Risky Reverse-Mortgages,* MinnPost (April 5, 2013), *http://www.minnpost.com/business/2013/04/state-ages-minnesota-braces-problems-risky-reverse-mortgages*; and HUD Presentation, Nat'l Reverse Mortgage Lenders Ass'n Eastern Regional Meeting (Mar. 26, 2012) (noting that 8.1 and 9.4 percent of active Home Equity Conversion Mortgage loans were in default in July 2011 and February 2012, respectively).

[228] *See id.* at 51759–60 (citing Press Release, Illinois Attorney General, *Madigan Sues Two Reverse Mortgage Brokers For Using Deceptive Marketing to Target Seniors* (Feb. 8, 2010), *http://www.illinoisattorneygeneral.gov/pressroom/2010_02/20100208.html*; Press Release, *Washington State Office of the Attorney General, Ferguson Files Complaint Against Bellevue Insurance Agent and His Company for Targeting Elderly Widows* (July 29, 2013), *http://www.atg.wa.gov/news/news-releases/ferguson-files-complaint-against-bellevue-insurance-agent-and-his-company.*

[229] *See id.* at 51760 (citing New York State Banking Department comment letter, Board of Governors of the Fed. Reserve System docket no. OP–1388, p. 5, submitted Aug. 6, 2010; San Francisco Hearing, Remarks of Preston DuFauchard, Commissioner of the California Department of Corporations).

Bureau has provided additional guidance to instruct financial institutions how particular data points apply to reverse mortgages. Finally, the Bureau is adopting a flag to ensure that data reported for reverse mortgages will not be commingled unknowingly with data reported for other covered loans. *See* the section-by-section analysis of § 1003.4(a)(36).

The final rule modifies proposed § 1003.2(q) to specify that a reverse mortgage is a reverse mortgage transaction as defined in Regulation Z, 12 CFR 1026.33(a), but without regard to whether the security interest is created in a principal dwelling. Thus, under Regulation C, a transaction that otherwise meets the definition of a reverse mortgage must be reported even if the security interest is taken in, for example, the borrower's second residence.

Section 1003.2(q) also contains one revision to align the definition with other changes being adopted in the final rule. As discussed in the section-by-section analysis of § 1003.2(d) and (o), the proposal provided that closed-end mortgage loans and open-end lines of credit were mutually exclusive of reverse mortgages, and thus a covered loan under proposed § 1003.2(e) was a closed-end mortgage loan, an open-end line of credit, or a reverse mortgage that was not otherwise excluded under proposed § 1003.3(c). The final rule eliminates the mutual exclusivity between: (1) Closed-end mortgage loans and open-end lines of credit and (2) reverse mortgages. Thus, the final rule both eliminates reverse mortgages as a category of covered loans under § 1003.2(e) and eliminates the cross-reference to § 1003.2(e) from the reverse mortgage definition.

Final § 1003.2(q) is adopted pursuant to the Bureau's authority under section 305(a) of HMDA. For the reasons given above, the Bureau believes that including reverse mortgages within the scope of the regulation is a reasonable interpretation of HMDA section 303(2), which defines ''mortgage loan'' to mean a loan which is secured by residential real property or a home improvement loan. The Bureau interprets that term to include reverse mortgages, as those transactions are secured by residential real property, and they may be used for home improvement. In addition, pursuant to its authority under section 305(a) of HMDA, the Bureau believes that this proposed adjustment is necessary and proper to effectuate the purposes of HMDA, to prevent circumvention or evasion thereof, and to facilitate compliance therewith. For the reasons given above, by requiring all financial institutions to report information regarding reverse mortgages, this proposed modification would ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Furthermore, as reverse mortgages are a common method of obtaining credit, this proposed modification would assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

Section 1003.3 Exempt Institutions and Excluded Transactions

3(c) Excluded Transactions

Regulation C currently excludes several categories of transactions from coverage, but the exclusions are scattered throughout the regulation text, appendix A, and commentary. To streamline the regulation, the Bureau proposed to consolidate all existing exclusions in new § 1003.3(c). The Bureau also proposed guidance concerning two categories of excluded transactions: Loans secured by liens on unimproved land and temporary financing.

The Bureau received no comments opposing, and one comment supporting, the consolidation of excluded transactions into § 1003.3(c) and is finalizing the reorganization as proposed. The Bureau received a number of comments addressing specific categories of excluded transactions and suggesting additional categories of transactions that should be excluded. For the reasons discussed below, the Bureau is finalizing § 1003.3 to clarify that certain categories of transactions, including all agricultural-purpose transactions and commercial-purpose transactions not for home purchase, home improvement, or refinancing purposes, are excluded from reporting. The final rule also revises § 1003.3 and its accompanying commentary for clarity and to address questions raised by commenters.

Suggested Exclusions Not Adopted

A few commenters suggested specifically excluding loans made by financial institutions to their employees. The commenters stated that it is and will continue to be difficult to report such loans and that, because such loans typically are offered on better terms than loans to non-employees, their inclusion in HMDA data will skew the dataset and will serve no purpose for fair lending testing. The final rule does not specifically exclude loans made to financial institutions' employees. It is not clear why such loans are more difficult to report than other loans, and commenters did not provide any details to explain the difficulty. Loans to employees may be made on more favorable terms than other loans, but the Bureau doubts that employee loans are originated in sufficient quantities to skew the overall HMDA data. Finally, as always, HMDA data are used only as the first step in conducting a fair lending analysis. Examiners conducting fair lending examinations will be able to identify by looking at loan files when differences in loan pricing, for example, are attributable to an applicant's or borrower's status as a financial institution's employee.

Commenters suggested excluding a number of other types of transactions from coverage. The section-by-section analysis of § 1003.2(f) (definition of dwelling) discusses coverage of transactions secured by other than a single-family, primary residence; the section-by-section analysis of § 1003.3(c)(10) discusses coverage of loans made to trusts; and the section-by-section analysis of § 1003.4(a) (reporting of purchases) discusses coverage of repurchased loans.

3(c)(1)

Proposed § 1003.3(c)(1) and comment 3(c)(1)–1 retained Regulation C's existing exclusion for loans originated or purchased by a financial institution acting in a fiduciary capacity, which currently is located in § 1003.4(d)(1). The Bureau received no comments concerning proposed § 1003.3(c)(1) or comment 3(c)(1)–1 and finalizes them as proposed, with several technical revisions for clarity.

3(c)(2)

Proposed § 1003.3(c)(2) retained Regulation C's existing exclusion for loans secured by liens on unimproved land, which currently is located in § 1003.4(d)(2). The Bureau proposed new comment 3(c)(2)–1 to clarify that the exclusion: (1) Aligns with the exclusion from RESPA coverage of loans secured by vacant land under Regulation X § 1024.5(b)(4), and (2) does not apply if the financial institution ''knows or reasonably believes'' that within two years after the loan closes, a dwelling will be constructed or placed on the land using the loan proceeds. For the reasons discussed below, the Bureau is finalizing § 1003.3(c)(2) as proposed but is finalizing comment 3(c)(2)–1 with certain changes in response to comments received.

The Bureau received a number of comments from financial institutions, trade associations, and other industry participants about proposed comment 3(c)(2)–1. Commenters agreed that loans secured by unimproved land should be excluded, but they stated that the proposed comment was inappropriate and that the Bureau either should remove it entirely or should clarify it. A few commenters stated that aligning with Regulation X was unnecessary and advocated a simple rule that would exclude all loans secured only by land when made. Other commenters stated that, if retained, the exemption should be based on the financial institution's actual knowledge, rather than on a ''knows or reasonably believes'' standard that would require lenders to speculate about whether a dwelling would be constructed. Commenters argued that examiners later could second-guess such speculative decisions. Some commenters stated that, as written, the proposed comment would make almost all consumer lot loans reportable, because they generally are built on within two years.

The Bureau believes that providing guidance about the types of transactions covered by the exclusion for loans secured by liens on unimproved land is preferable to eliminating the proposed comment, and that aligning with Regulation X helps to achieve regulatory consistency. Moreover, where a loan's funds will be used to construct a dwelling in the immediate future, having information about that loan serves HMDA's purposes of understanding how financial institutions are meeting the housing needs of their communities. On the other hand, the Bureau acknowledges that the Regulation X standard does not provide sufficient specificity for purposes of HMDA reporting, because it does not state how and when a financial institution must know that a dwelling will be constructed on the land.

The final rule adopts comment 3(c)(2)–1 without the cross-reference to Regulation X but with a statement, consistent with the spirit of Regulation X, that a loan is secured by a lien on unimproved land if the loan is secured by vacant or unimproved property at the time that is originated, unless the financial institution knows, based on information that it receives from the applicant or borrower at the time the application is received or the credit decision is made, that the loan's proceeds will be used within two years after closing or account opening to construct a dwelling on the land or to purchase a dwelling to be placed on the land. If the applicant or borrower does not provide the financial institution this information at the time the application is received or the credit decision is made, then the exclusion applies. Financial institutions should note that, even if a loan is not exempt under § 1003.3(c)(2), it may be exempt under another § 1003.3(c) exclusion, such as the temporary financing exclusion under § 1003.3(c)(3).

3(c)(3)

Proposed § 1003.3(c)(3) retained Regulation C's existing exclusion for temporary financing, which currently is located in § 1003.4(d)(3). Comments 3(c)(3)–1 and –2 were proposed to clarify the scope of the exclusion. For the reasons discussed below, the Bureau is adopting § 1003.3(c)(3) as proposed but is finalizing the commentary to § 1003.3(c)(3) with revisions to address questions and concerns that commenters raised.

Consumer advocacy group commenters generally argued that construction loans should not be excluded as temporary financing. Financial institutions, trade associations, and other industry participants generally argued that temporary financing should be excluded from coverage. Several of these commenters argued that all construction loans should be excluded as temporary financing. Most such commenters agreed that guidance about the scope of the temporary financing exclusion would be helpful, but many found the guidance in proposed comments 3(c)(3)–1 and –2 confusing or objected that it relied on a subjective standard. Commenters suggested several methods to clarify the proposed guidance.

Regarding proposed comment 3(c)(3)–1, which provided general guidance about the temporary financing exclusion, a few commenters objected to the cross-reference to Regulation X. They stated that the Regulation X standard is unclear and ambiguous and that cross-referencing it would create confusion about which construction loans qualify for Regulation C's exclusion. Some construction loans would be reported (*e.g.,* construction loans involving title transfer) and others would not (*e.g.,* construction-only loans). Similarly, one commenter suggested that long-term construction loans should be excluded regardless of whether they were made to ''bona fide builders.'' Another commenter argued that all construction loans should be exempt, except for construction loans with one-time closings, where the construction loan automatically rolls into permanent financing after a predetermined time. On the other hand, at least one commenter stated that aligning with Regulation X was helpful. Still others suggested that Regulation C should align with Regulation Z and that the Bureau either should adopt a bright-line test (similar to Regulation Z's) to define any loan with a term shorter than a prescribed period of time (*e.g.,* one or two years) as temporary financing, or should adopt a bright-line test to exclude all short-term construction loans. One commenter requested that the Bureau specifically define the term ''bridge loan,'' which is listed as an example of temporary financing in both existing § 1003.4(d)(3) and proposed comment 3(c)(3)–1.

Several commenters also argued that proposed comment 3(c)(3)–2 was confusing. Comment 3(c)(3)–2 explained that loans designed to *convert* to (*i.e.,* rather than designed to be *replaced* by) permanent financing were not temporary financing and thus were reportable. Consistent with Regulation X, the comment provided that loans issued with a commitment for permanent financing, with or without conditions, were considered loans that would ''convert'' to permanent financing and thus were not excluded transactions. Some commenters urged the Bureau to remove this statement or to clarify further the difference between a loan ''replaced by'' permanent financing and a loan ''converted'' to permanent financing. One commenter observed that a loan issued with a commitment for permanent financing could encompass a situation covered under proposed comment 3(c)(3)–1's first sentence (*i.e.,* a loan designed to be replaced by permanent financing at a later time). The commenter argued that such transactions would be excluded as temporary financing under proposed comment 3(c)(3)–1 but would lose the exemption under proposed comment 3(c)(3)–2. Other commenters questioned the meaning of the term ''designed'' and asked the Bureau to clarify whether construction-only loans that eventually are refinanced into longer-term financing must be reported. Some commenters stated that proposed comment 3(c)(3)–1's first sentence provided clear and sufficient guidance and that proposed comment 3(c)(3)–2 should be removed altogether.

The Bureau is finalizing the commentary to § 1003.3(c)(3) with revisions to address the foregoing concerns. Final comment 3(c)(3)–1 provides that temporary financing is excluded from coverage and provides that a loan or line of credit is temporary financing if it is designed to be replaced by permanent financing at a later time. The comment provides several

illustrative examples designed to clarify whether a loan or line of credit is designed to be replaced by permanent financing. The final rule does not provide for reporting of all construction loans, as some consumer advocacy group commenters recommended. The Bureau believes that the benefits of requiring all construction loans to be reported do not justify the burdens given that the permanent financing that replaces such loans will be reported.

The Bureau believes that comment 3(c)(3)–1 achieves HMDA's purposes while providing better guidance to financial institutions than existing Regulation C. Specifically, the comments should help to ensure that transactions involving temporary financing are not reported more than once; instead, such transactions will be captured by the separate reporting of the longer-term financing, if it otherwise is covered by Regulation C. At the same time, the comments will help to ensure reporting of short-term transactions that function as permanent financing (*e.g.,* a loan with a nine-month term to enable an investor to purchase a home, renovate, and re-sell it before the term expires).[230]

After considering the comments received, the Bureau believes that neither aligning with Regulation X or Z, nor creating a new, bright-line rule centered around a loan's term, would serve HMDA's purposes as well as the guidance provided in final comment 3(c)(3)–1. Regulation Z generally excludes loans with terms of less than one year from, for example, the regulation's ability-to-repay rules. Conducting a full ability-to-repay analysis may not be critical for such short-term financing. However, it is important for HMDA purposes to know how often and under what circumstances such financing is granted, for example, to investors to purchase property and then to sell it for occupancy before the term expires. Similarly, the Bureau believes that it is important for HMDA purposes to ensure that construction loans are not double-counted when they are replaced by permanent financing. Thus, the Bureau has not aligned with Regulation X's guidance concerning construction loans, which would have required, for example, some longer-term construction loans to be reported.

Two commenters requested that the Bureau clarify whether a loan's purpose is ''construction'' or ''home improvement'' when improvements to an existing dwelling are so extensive that they fundamentally change the nature of the dwelling. The commenters suggested that, if a loan's purpose was ''construction,'' then the loan would be excluded from coverage, whereas if its purpose was ''home improvement,'' it would be included. Under the final rule, the temporary financing exclusion depends on whether the loan is or is not designed to be replaced by longer-term financing at a later time. Thus, for example, if a financial institution originates a short-term loan to a borrower to add a second floor to a dwelling or to complete extensive renovations, the loan is temporary financing if it is designed to be replaced by longer-term financing at a later time (*e.g.,* financing completed through a separate closing that will pay off the short-term loan). If the loan is, for example, a traditional home-equity loan that is not designed to be replaced by longer-term financing, or if it is a construction-to-permanent loan that automatically will convert to permanent financing without a separate closing, then it is not temporary financing and is not excluded under § 1003.3(c).

3(c)(4)

Proposed § 1003.3(c)(4) and comment 3(c)(4)–1 retained Regulation C's existing exclusion for the purchase of an interest in a pool of loans, which currently is located in § 1003.4(d)(4). The Bureau received no comments concerning proposed § 1003.3(c)(4) or comment 3(c)(4)–1 and finalizes them as proposed, with technical revisions for clarity.

3(c)(5)

Proposed § 1003.3(c)(5) retained Regulation C's existing exclusion for the purchase solely of the right to service loans, which currently is located in § 1003.4(d)(5). The Bureau received no comments concerning proposed § 1003.3(c)(5) and finalizes it as proposed, with technical revisions for clarity.

3(c)(6)

Proposed § 1003.3(c)(6) and comment 3(c)(6)–1 retained Regulation C's existing exclusion for loans acquired as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office, which currently is located in § 1003.4(d)(6) and comment 4(d)–1. The Bureau received no comments concerning proposed § 1003.3(c)(6) or comment 3(c)(6)–1 and finalizes them generally as proposed, with technical revisions for clarity.

3(c)(7)

Proposed § 1003.3(c)(7) retained Regulation C's existing exclusion for loans and applications for less than $500, which currently is located in paragraph I.A.7 of appendix A. The Bureau received no comments concerning proposed § 1003.3(c)(7) and finalizes it as proposed, with technical revisions for clarity.

3(c)(8)

Proposed § 1003.3(c)(8) retained Regulation C's existing exclusion for the purchase of a partial interest in a loan, which currently is located in comment 1(c)–8. The Bureau received no comments concerning proposed § 1003.3(c)(8) and finalizes it generally as proposed, with technical revisions for clarity.

3(c)(9)

As proposed, § 1003.3(c)(9) stated that a loan used primarily for agricultural purposes was an excluded transaction. Proposed comment 3(c)(9)–1, in turn, retained the existing exclusion of home purchase loans secured by property primarily for agricultural purposes, which currently is located in comment Home purchase loan-3. For the reasons discussed below, the Bureau is adopting § 1003.3(c)(9) with technical revisions for clarity and is adopting comment 3(c)(9)–1 with revisions to clarify that all agricultural-purpose loans are excluded transactions.

The Bureau received a number of comments from financial institutions, industry associations, and other industry participants about proposed § 1003.3(c)(9) and comment 3(c)(9)–1. Some commenters stated that the proposed regulation text appeared to exclude all agricultural loans, while the commentary appeared to exclude only home-purchase agricultural loans. These commenters stated that all agricultural loans should be excluded, because they are not comparable to other loans reported under HMDA, and reporting them does not serve HMDA's purposes. Other commenters noted that proposed comment 3(c)(9)–1 retained a cross-reference to Regulation X § 1024.5(b)(1), which had exempted loans on property of 25 acres or more from coverage, even though that provision since had been removed from Regulation X. A few of these commenters argued that the

[230] The final rule thus is consistent with the existing FFIEC FAQ concerning temporary financing, which acknowledges that temporary financing is exempt and states that ''financing is temporary if it is designed to be replaced by permanent financing of a much longer term. A loan is not temporary financing merely because its term is short. For example, a lender may make a loan with a 1-year term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Such a loan must be reported as a home purchase loan.'' *See* Fed. Fin. Insts. Examination Council, Regulatory & Interpretive FAQ's, *Temporary Financing, http://www.ffiec.gov/hmda/faqreg.htm#TemporaryFinancing.*

Bureau should retain an independent 25-acre test in Regulation C, while others stated that the 25-acre test should be removed altogether because smaller properties can be primarily agricultural and thus should be excluded from coverage, while larger properties can be primarily consumer-purpose and thus should be included in coverage.

The Bureau is finalizing § 1003.3(c)(9) and comment 3(c)(9)–1 with revisions to address commenters' concerns. First, final comment 3(c)(9)–1 clarifies that all primarily agricultural-purpose transactions are excluded transactions, whether they are for home purchase, home improvement, refinancing, or another purpose. The comment also clarifies that an agricultural-purpose transaction is a transaction that is secured by a dwelling located on real property used primarily for agricultural purposes or that is secured by a dwelling and whose funds will be used primarily for agricultural purposes. The final rule eliminates from the comment both the proposed cross-reference to Regulation X and the 25-acre test. The comment instead provides that financial institutions may consult Regulation Z comment 3(a)–8 for guidance about what is an agricultural purpose. Comment 3(c)(9)–1 provides that a financial institution may use any reasonable standard to determine whether a transaction primarily is for an agricultural purpose and that a financial institution may change the standard used on a case-by-case basis. This flexible standard should provide sufficient latitude for a financial institution to justify its determination that a property was, or that a loan's funds were, intended to be used primarily for agricultural purposes.

3(c)(10)

Unlike certain other consumer protection statutes such as TILA and RESPA, HMDA does not exempt business- or commercial-purpose transactions from coverage. Thus, Regulation C currently covers closed-end, commercial-purpose loans made to purchase, refinance, or improve a dwelling. Examples of commercial-purpose loans that currently are reported are: (1) A loan to an entity to purchase or improve an apartment building (or to refinance a loan secured thereby); and (2) a loan to an individual to purchase or improve a single-family home to be used either as a professional office or as a rental property (or to refinance a loan secured thereby). Dwelling-secured, commercial-purpose lines of credit currently are not required to be reported. Regulation C currently does not provide a mechanism, such as a commercial-purpose flag, to distinguish commercial-purpose loans from other loans in the HMDA dataset, but it appears that commercial-purpose loans currently represent a small percentage of HMDA-reportable loans.[231]

As discussed in the section-by-section analysis of § 1003.2(d), (e) and (o), the proposal provided for dwelling-secured transactional coverage and for mandatory reporting of open-end lines of credit. Under the proposal, financial institutions would have reported applications for, and originations of, all dwelling-secured, commercial-purpose closed-end mortgage loans and open-end lines of credit. For example, a financial institution would have reported all closed-end mortgage loans or open-end lines of credit to a business or sole proprietor secured by a lien on the business owner's dwelling, even if only out of an abundance of caution (*i.e.,* in addition to other collateral such as a storefront, inventory, or equipment) and regardless of how the funds would be used (*e.g.,* to purchase the storefront, inventory, or equipment). A financial institution also would have been required to report any transaction secured by a multifamily dwelling, such as an apartment building, even if the loan or line of credit was for non-housing-related business expansion. The proposal thus would have expanded Regulation C's coverage of commercial-purpose transactions. For the reasons discussed below, the Bureau is maintaining Regulation C's existing purpose-based transactional coverage scheme for commercial-purpose transactions.

A large number of comments addressed the proposal's coverage of dwelling-secured commercial-purpose transactions. Consumer advocacy groups favored covering all such transactions, while a significant number of industry commenters, a government agency commenter, and a group of State regulators, urged the Bureau to exclude some or all of these transactions.

Numerous consumer advocacy groups generally asserted that having information about dwelling-secured commercial transactions would help them to understand whether neighborhoods are receiving the full range of credit they need. Some consumer advocacy groups specifically urged the Bureau to collect data about all transactions secured by multifamily properties, to understand whether financial institutions are supporting the development of affordable rental housing. Others argued that dwelling-secured commercial-purpose reporting would help to understand the full range of liens against single-family properties. Some of these commenters asserted that, during the mortgage crisis, dwelling-secured commercial lending contributed to overleveraging and foreclosures in many communities, and that HMDA data about such loans could have warned policymakers and advocates of potential concerns.

Some consumer advocacy group commenters specified that dwelling-secured commercial lending is an important source of small business financing, particularly in minority and immigrant communities, and that having information about the availability and pricing of such transactions would help to understand those communities' economies, including the total amount of debt and default risk on properties and potential problems related to overextension of credit. A few consumer advocacy commenters noted that information about all dwelling-secured commercial lending also would provide insight into the demand for, and use of, credit for expansion of small businesses.[232]

A significant number of industry commenters addressed the proposal's expanded coverage of commercial-purpose transactions, and they all opposed the change. Indeed, many commenters who objected to dwelling-secured transactional coverage cited expanded reporting of commercial-purpose transactions as their main concern. Industry commenters argued that implementing reporting of all dwelling-secured, commercial-purpose transactions would be burdensome, that the data reported would be of little value, and that requiring such reporting would exceed the Bureau's authority under HMDA.[233]

Regarding burden, industry commenters stated that removing the purpose test for commercial-purpose

[231] For example, applications and originations for multifamily housing represented about 0.4 percent of all applications and originations reported for 2013. *See* Neil Bhutta & Daniel R. Ringo, Bd. of Governors of the Fed. Reserve Sys., 100 Fed. Reserve Bulletin 6, *The 2013 Home Mortgage Disclosure Act Data,* at 4 (Nov. 2014).

[232] Some of these commenters also asserted that the Bureau should include in the final rule a flag to distinguish commercial- and consumer-purpose transactions. The Bureau is finalizing such a flag in § 1003.4(a)(38).

[233] A subset of industry commenters specifically objected to reporting commercial-purpose open-end lines of credit. Indeed, even the small group of industry commenters that did not object to reporting consumer-purpose lines of credit argued that commercial-purpose lines should not be covered. Commenters' concerns about the burdens and benefits of reporting commercial-purpose lines of credit were similar to those raised about commercial-purpose transactions generally.

applications and originations would increase significantly financial institutions' reportable transactions. A subset of commenters specifically estimated the increase, which varied widely (*i.e.,* from 10 percent to over 900 percent) depending on institution type and the extent of an institution's engagement in dwelling-secured, small-business lending. Some institutions argued that many community banks focus on small-business lending, so expanded commercial coverage particularly could burden smaller institutions. A number of commenters worried about ongoing costs from collecting, quality checking, and reporting information for such a large number of transactions, and some worried about incurring penalties for errors that likely would occur in the commercial data.[234]

Industry commenters also argued that reporting all dwelling-secured commercial transactions would be difficult operationally. Different staff and systems typically handle commercial and residential mortgage loans, and lenders may have relied on manual processes for reporting and assembling data for the limited set of commercial-purpose transactions traditionally reported. Commenters argued that expanded coverage, particularly when combined with new data points, would require updating systems or software, implementing new policies and procedures, and training or hiring new staff. These would be expensive and time-consuming processes, with costs passed to consumers.

Industry commenters asserted that the benefits of reporting all commercial-purpose transactions would not justify the burdens. A significant number of commenters argued that reporting data about all commercial-purpose transactions would not serve HMDA's purposes. Some industry commenters asserted that commercial-purpose transactions often are provided to non-natural persons. In such cases, no race, ethnicity, and sex data would be collected and no fair lending analysis could be done (except of the demographics of the dwelling's census tract). Commenters argued that reporting data about such transactions would not help to uncover discriminatory lending practices.

Many commenters focused on what they referred to as ''abundance of caution'' transactions and asserted that such transactions would not help to determine whether financial institutions are serving community housing needs. Commenters argued that, in abundance of caution transactions, the home is added to an already adequately secured transaction (to over-collateralize the loan), is secondary to business collateral, and is an insignificant piece of the overall loan structure.[235] In contrast, commenters argued, consumer-purpose loans typically are fully collateralized by the home. Commenters also argued that there is only a tangential relationship between the loan and housing because the loan's funds are used for business, not housing, purposes.[236]

Regarding data collection, some commenters argued that the application, documentation, and underwriting processes are different for commercial- and consumer-purpose transactions, so data for many of the Bureau's proposed data points are not gathered in a systematic way for commercial-purpose transactions. Some commenters similarly asserted that reporting data for all dwelling-secured commercial transactions would be challenging because Regulation C's existing and the Bureau's newly proposed data points focus on consumer lending. Commenters argued that many data points would not apply to, or would be difficult to define for, commercial transactions.[237]

Other commenters worried that even correctly reported data would be of little value in understanding commercial-purpose transactions. For example, some commenters observed that numerous data points would be reported ''not applicable'' for commercial-purpose transactions and argued that the limited number of reportable data points would not further HMDA's purposes or assist policymakers in preventing or responding to future mortgage crises. Others observed that much information that *would be* relevant to understanding the economics of commercial-purpose loans, such as the debt service coverage ratio, leasing requirements and expirations, zoning restrictions, environmental regulations, and cash flow, would not be reported. Some commenters also asserted that there would be little value in comparing all dwelling-secured commercial- and consumer-purpose transactions, because they are underwritten and priced differently (*e.g.,* based on cash flow rather than income), and they have different loan terms and features (*e.g.,* rate and fee structures, balloon, interest-only and prepayment penalty terms). Finally, some industry commenters worried that mixing data about all dwelling-secured, commercial-purpose transactions with traditional mortgage loans would distort or skew the HMDA dataset and impair its integrity for HMDA users.

Numerous industry commenters argued that HMDA does not authorize the Bureau to require reporting of all dwelling-secured commercial-purpose transactions. They argued that HMDA itself focuses on *home* mortgage lending and that Congress understood, but opted not to revise, Regulation C's current coverage when it passed the Dodd-Frank Act.[238] Some commenters similarly argued that, when Congress intended to grant the Bureau authority to collect business lending data, it did so explicitly.[239] Other commenters argued

[234] Some commenters argued that the Bureau's proposal to expand HMDA-reportable data points only compounded their concerns about increased volume. Others argued that any reporting burden that might be mitigated by aligning Regulation C's data reporting with MISMO standards would not apply to commercial-purpose transactions, because MISMO has not been widely adopted in commercial and multifamily financing.

[235] Commenters explained that, when lenders originate small business loans, they routinely rely on a business owner's dwelling as supplemental collateral out of an abundance of caution, even if other (business) collateral fully collateralizes the loan. Several commenters emphasized that abundance of caution transactions occur frequently, noting that the SBA as a matter of course requires a lien on the borrower's residence when guaranteeing loans. One commenter elaborated that the likelihood that a dwelling would be part of the workout of a distressed commercial loan is ''slim-to-none.'' The commenter asserted that lenders take dwellings as collateral as a matter of safety and soundness, merely to ensure that the borrower has ''skin in the game.''

[236] A few commenters expressed similar concerns about loans subject to cross-collateralization agreements, which commonly occur in commercial lending and in which all of the collateral for multiple loans secures all of the loans. Commenters worried that non-dwelling-secured commercial transactions would be HMDA-reportable merely because they were cross-collateralized by dwelling-secured loans.

[237] Commonly cited examples included: application and application date; applicant's income; credit score; pricing data such as points and fees; debt-to-income ratio; combined loan-to-value ratio; property value; and ethnicity, race, sex, and age data.

[238] A group of State regulators similarly argued that the expansion into commercial lending was outside of HMDA's scope and would burden financial institutions for little benefit. They argued that Federal and State regulators should determine whether financial institutions are structuring transactions to evade reporting or other disclosure requirements, and that regulators could assess evasion efforts through risk-scoping and examinations.

[239] For example, section 1071 of the Dodd-Frank Act amended ECOA to authorize the Bureau to obtain data about loans and lines of credit to women-owned, minority-owned, and small businesses. Some commenters argued that reporting commercial transactions in HMDA was unnecessary because data about small-business lending would be reported when the Bureau implements section 1071.

that HMDA reporting of all commercial-purpose transactions would duplicate CRA reporting or would negatively affect CRA performance.

Finally, some commenters expressed concerns that reporting all dwelling-secured commercial-purpose transactions could be particularly burdensome for smaller institutions, because small-business loans may represent a large portion of their lending activity. A few commenters asserted that some small institutions exited consumer mortgage lending to focus on small-business lending specifically to avoid the costs of complying with Dodd-Frank Act regulations and that the proposal unfairly would burden such institutions with HMDA reporting. Others expressed concern that financial institutions would stop taking small-business borrowers' homes as collateral to avoid reporting, or would increase borrowers' fees to cover reporting costs, in turn decreasing small businesses' access to credit and harming local and national economies.

Industry commenters provided a number of alternatives for coverage of commercial-purpose transactions. A significant number of commenters urged the Bureau specifically to exclude all dwelling-secured commercial-purpose transactions. These commenters cited the benefits and burdens already discussed, asserted that such an exclusion would reduce burden significantly, and argued that it would align coverage across Regulations C, X, and Z. A number of commenters urged the Bureau specifically to exclude transactions for multifamily housing (or alternatively to non-natural persons), emphasizing the differences in underwriting between multifamily and other lending, and asserting that multifamily loan data is particularly ill-suited to serving HMDA's purposes because multifamily loans typically are made to corporate borrowers rather than to consumers.[240] A few commenters expressed concern about the privacy of multifamily borrowers, fearing that multifamily loans easily could be identified in the dataset because relatively few are made each year and they have unique characteristics.

Other commenters variously urged that reporting of commercial applications and originations should be required only for: (1) Multifamily transactions; (2) closed-end mortgage loans; (3) first-lien transactions; or (4) transactions for home purchase, home improvement, or refinancing.[241] Commenters who recommended retaining Regulation C's home purchase, home improvement, and refinancing test for commercial-purpose transactions argued that: (1) The purpose test reasonably limits the scope of reportable commercial transactions and better serves HMDA's purposes; and (2) financial institutions easily can identify their dwelling-secured commercial- and consumer-purpose transactions, because they are accustomed to making a similar determination for coverage under Regulations X and Z.

As discussed in the proposal, the Bureau believes that HMDA's scope is broad enough to cover all dwelling-secured commercial-purpose transactions and that collecting information about all such transactions would serve HMDA's purposes. HMDA section 303(2) defines ''mortgage loan'' as a loan secured by residential real property or a home improvement loan. While the Board historically interpreted HMDA section 303(2) to refer to loans for home purchase, home improvement, or refinancing purposes, the Bureau believes that the definition is broad enough to include all dwelling-secured mortgage loans and lines of credit, even if their funds are used in whole or in part for commercial (or for other, non-housing-related) purposes.[242]

Moreover, the Bureau believes that collecting data about all such transactions would serve HMDA's purposes by showing not only the availability and condition of multifamily housing units, but also the full extent of leverage on single-family homes, particularly in communities that may rely heavily on dwelling-secured loans to finance small-business expenditures. The Bureau believes that financial institutions serve the housing needs of their communities not only by providing fair and adequate financing to purchase and improve homes, but also by ensuring that neither individual borrowers nor particular communities are excessively overleveraged through business-related home-equity borrowing, and that all such credit is extended on equitable terms.[243]

The Bureau nevertheless has determined at this time to require reporting only of applications for, and originations of, dwelling-secured commercial-purpose loans and lines of credit for home purchase, home improvement, or refinancing purposes. After considering the comments, the Bureau concluded that it is unclear whether the benefits of reporting all dwelling-secured commercial-purpose transactions justify the burdens, particularly in light of the many other changes required under the final rule. While the Bureau has no data with which to estimate specifically how many additional transactions would have been reported under the proposal, it seems clear that some financial institutions' HMDA reports would have expanded dramatically. The Bureau is concerned that the impact could be greatest for smaller institutions that specialize in small-business lending. The Bureau considered other burdens, as well, including the unique burdens of collecting and reporting information about commercial-purpose transactions (relative to consumer-purpose transactions) and the burdens of addressing loans subject to cross-collateralization agreements. Against these burdens, the Bureau weighed commenters' arguments that abundance of caution transactions likely would pose less risk to borrowers' homes than consumer-purpose equity lending and that data reporting for commercial-purpose lending could be addressed in a future Bureau rulemaking to implement section 1071 of the Dodd-Frank Act.

The Bureau concluded that, at this time, maintaining purpose-based reporting of dwelling-secured commercial-purpose transactions appropriately balances reporting benefits and burdens. The final rule thus adds to Regulation C new § 1003.3(c)(10), which provides that loans and lines of credit made primarily for a commercial or business purpose are excluded transactions unless they are for the purpose of home purchase under § 1003.2(j), home improvement under § 1003.2(i), or refinancing under § 1003.2(p).

New comment 3(c)(10)–1 explains the general rule and clarifies that § 1003.3(c)(10) does not exclude all dwelling-secured business- or commercial-purpose loans or credit lines from coverage. New comment 3(c)(10)–2 explains how financial

[240] Commenters cited other differences, such as the lack of standardized underwriting criteria in multifamily lending, and heavy reliance on a property's income-producing capacity, on the borrower's cash flow, and on an evaluation of the strength of the overall market.

[241] Several commenters discussed commercial- and agricultural-purpose loans together and urged the Bureau to exclude both categories of loans entirely from Regulation C. For the reasons discussed in the section-by-section analysis of § 1003.3(c)(9), the final rule excludes agricultural-purpose transactions from reporting.

[242] As noted in the Bureau's proposal, when the Board first proposed to implement HMDA, it proposed to require reporting of all loans secured by residential real property. *See* 41 FR 13619, 13620 (Mar. 31, 1976). The Board subsequently decided to adopt a narrower scope based on loan purpose, because the Board believed that focusing on loan purpose would provide more useful data. *See* 41 FR 23931, 23932 (June 14, 1976).

[243] *See also* 79 FR 51731, 51747–48 (Aug. 29, 2014).

institutions should determine whether a transaction primarily is for a commercial or business purpose. Specifically, comment 3(c)(10)–2 provides that a loan or line of credit that is business, commercial, or organizational credit under Regulation Z § 1026.3(a) and related commentary also is business or commercial credit under Regulation C and subject to special reporting under § 1003.3(c)(10).[244] Comments 3(c)(10)–3 and –4 provide illustrative examples of business- or commercial-purpose loans and credit lines that are covered loans under the final rule, or that are excluded transactions under § 1003.3(c)(10).

The Bureau intends § 1003.3(c)(10) to maintain coverage of commercial-purpose transactions generally at its existing level. Section 1003.3(c)(10) does expand coverage of dwelling-secured commercial-purpose lines of credit, which are not currently required to be reported, by requiring them to be reported if they primarily are for home purchase, home improvement, or refinancing purposes.[245] For the reasons discussed in the section-by-section analysis of § 1003.2(o), the final rule equalizes reporting of closed-end loans and open-end credit lines. Section 1003.3(c)(10) thus treats all dwelling-secured, commercial-purpose transactions the same, whether closed- or open-end. The Bureau believes that relatively few dwelling-secured, commercial-purpose open-end lines of credit are used for home purchase, home improvement, or refinancing purposes.[246] The Bureau thus expects that reporting them will impose a relatively small burden on financial institutions. And, for the reasons given, the Bureau concludes that coverage of dwelling-secured, commercial-purpose credit lines for home improvement, home purchase, or refinancing purposes, as finalized in this rule, is necessary to further HMDA's purposes, especially because this is a segment of the mortgage market for which the public and public officials lack significant data.

Section 1003.3(c)(10) also expands coverage of applications by, or originations to, certain trusts. For simplicity and regulatory consistency, final comment 3(c)(10)–2 aligns the definition of business or commercial credit under Regulation C with that definition under Regulation Z § 1026.3(a). In the 2013 TILA–RESPA Final Rule, the Bureau revised comments 3(a)–9 and –10 to § 1026.3(a) to provide that certain trusts made primarily for personal, family, or household purposes are transactions to natural persons in substance if not in form. Thus, transactions involving trusts as described in Regulation Z comment 3(a)–10 are subject to general dwelling-secured reporting under Regulation C.[247] The Bureau believes that the benefits of aligning the § 1003.3(c)(10) test with Regulation Z justify the burdens of reporting these transactions.[248]

Maintaining commercial reporting roughly at its existing level will burden financial institutions more than eliminating reporting of all commercial-purpose transactions, as many commenters suggested. Financial institutions will continue to report transactions for home purchase, home improvement or refinancing purposes, and they will incur some burden distinguishing commercial-purpose transactions subject to § 1003.3(c)(10) from non-commercial-purpose transactions subject to the general dwelling-secured coverage test. Like the commercial-purpose test under Regulation Z § 1026.3(a), the § 1003.3(c)(10) test requires financial institutions to determine the primary purpose of the transaction by looking at a variety of factors (and not, for example, by applying a bright-line rule). In some cases, for transactions that have multiple purposes, this approach will require financial institutions to exercise their judgment about the transaction's primary purpose.

The Bureau believes that the benefits of maintaining purpose-based reporting of commercial transactions, however, justify these burdens. As noted at the beginning of this section-by-section analysis, HMDA, unlike TILA and RESPA, does not exempt business- or commercial-purpose transactions from coverage. Rather, HMDA, like ECOA, as implemented by the Bureau's Regulation B, and the CRA, provides authority to cover commercial-purpose transactions. HMDA's scope reflects that HMDA has a somewhat broader-based, community-level focus than certain other consumer financial laws.

Specifically, while HMDA endeavors to ensure that applicants and borrowers are not discriminated against in particular transactions, it also seeks to ensure that financial institutions are meeting the housing needs of their communities and that public-sector funds are distributed to improve private investments in areas where they are needed. HMDA's broader purposes are served by gathering data both about individual transactions to applicants or borrowers and, for example, about the available stock of multifamily rental housing in particular communities.[249] The final rule achieves these goals without requiring institutions to report all dwelling-secured commercial-purpose transactions. The final rule also addresses commenters' concerns about commingling consumer- and commercial-purpose data by adding a commercial-purpose flag in § 1003.4(a)(38).[250] Finally, the final rule clarifies whether and how certain data points apply to commercial-purpose transactions.[251]

[244] The commentary to Regulation Z § 1026.3(a) discusses some transactions (such as credit card transactions) that are not subject to Regulation C at all, and others (such as agricultural-purpose loans) that are excluded from Regulation C under final § 1003.3(c)(9) regardless of whether they are for home purchase, home improvement, or refinancing purposes. The Bureau believes that the burden relief achieved through regulatory alignment supports relying on Regulation Z's commentary to the extent applicable.

[245] A few commenters specifically requested that the Bureau exclude from coverage dwelling-secured, agricultural-purpose lines of credit. The final rule excludes such transactions under § 1003.3(c)(9). *See* the section-by-section analysis of § 1003.3(c)(9).

[246] As discussed in part VII below, the Bureau has faced challenges estimating institutions' open-end lending volume given limitations in publicly available data sources. For example, it is difficult to estimate commercial-purpose open-end lending volume because available data sources do not distinguish between consumer- and commercial-purpose lines of credit.

[247] Section 1003.3(c)(10) sets forth rules only concerning coverage. When determining whether and how to report particular data points for covered trust transactions, financial institutions should rely on the guidance set forth in § 1003.4 and accompanying commentary and instructions.

[248] In aligning with Regulation Z's interpretation of trusts for coverage purposes, the Bureau is declining to exclude trusts from reporting as some commenters urged. As discussed in the 2013 TILA–RESPA Final Rule, the Bureau believes that many dwelling-secured loans made to trusts are consumer-focused transactions in substance and that data about such transactions will fulfill HMDA's purposes of understanding how financial institutions are serving the housing needs of their communities, even if particular data points like age or credit score may not apply to all trust transactions. The final rule includes specific guidance about whether and how to report age (comment 4(a)(10)(ii)–4) or ethnicity, race, and sex (appendix B, instruction 7) for transactions involving trusts.

[249] It is also for this reason that the final rule does not exclude particular categories of commercial-purpose lending, such as multifamily or subordinate-lien commercial lending, from coverage.

[250] *See* the section-by-section analysis of § 1003.4(a)(38).

[251] *See, e.g.,* comments 4(a)(10)(iii)–7 and 4(a)(23)–5, specifying that a financial institution reports ''not applicable'' for income relied on and debt-to-income ratio when the applicant or co-applicant is not a natural person or when the covered loan is secured by a multifamily dwelling. *See also* § 1003.2(n) and comment 2(n)–2, which list special reporting requirements for multifamily dwellings.

3(c)(11)

As discussed in the section-by-section analysis of § 1003.2(g), the final rule provides that a financial institution is covered under Regulation C and must report data about covered loans if, among other things, the financial institution originated more than 100 open-end lines of credit in the preceding two years. The Bureau recognizes that some financial institutions may be covered financial institutions because they meet the open-end line of credit threshold in § 1003.2(g)(1)(v)(B) or (2)(ii)(B), but that these institutions may have closed-end mortgage lending volume that falls below the 25-loan coverage threshold in § 1003.2(g)(1)(v)(A) or (2)(ii)(A). Section 1003.3(c)(11) provides that such institutions' closed-end mortgage loans are excluded transactions. The Bureau does not believe that it is useful to burden such institutions with reporting closed-end mortgage data merely because their open-end lending exceeded the separate, open-end loan-volume threshold in § 1003.2(g). Comment 3(c)(11)–1 provides an illustrative example of the rule.

3(c)(12)

As discussed in the section-by-section analysis of § 1003.2(g), the final rule provides that a financial institution is covered under Regulation C and must report data about covered loans if, among other things, the financial institution originated more than 25 closed-end mortgage loans in the preceding two years. The Bureau recognizes that some financial institutions may be covered financial institutions because they meet the closed-end mortgage loan threshold in § 1003.2(g)(1)(v)(A) or (2)(ii)(A), but that these institutions may have open-end line of credit volume that falls below the 100-line of credit coverage threshold in § 1003.2(g)(1)(v)(B) or (2)(ii)(B). Section 1003.3(c)(12) provides that such institutions' open-end lines of credit are excluded transactions. The Bureau does not believe that it is useful to burden such institutions with reporting data about open-end lines of credit merely because their closed-end lending exceeded the separate, closed-end loan-volume threshold in § 1003.2(g). Comment 3(c)(12)–1 provides an illustrative example of the rule.

Section 1003.4 Compilation of Reportable Data

4(a) Data Format and Itemization

Section 1003.4(a) requires financial institutions to collect and record specific information about covered loans, applications for covered loans, and purchases of covered loans. As discussed in detail below, the Bureau proposed several changes to § 1003.4(a) to implement the Dodd-Frank Act amendments to HMDA and to exercise its discretionary authority under the Dodd-Frank Act to require collection of certain additional information. In addition, the Bureau proposed modifications to Regulation C to reduce redundancy, provide greater clarity, and make the data more useful.

The Bureau proposed modifications to § 1003.4(a) and comments 4(a)–1 and 4(a)–4 through –6. These revisions addressed reporting transactions involving more than one institution, reporting repurchased loans, and other technical modifications. In addition, the proposal solicited feedback on the number and type of data proposed to be collected. These issues are discussed below separately.

Reporting Transactions Involving More Than One Institution

Currently, commentary to § 1003.1(c) describes the ''broker rule,'' which explains a financial institution's reporting responsibilities when a single transaction involves more than one institution. Proposed comments 4(a)–4 and –5 modified and consolidated current comments 1(c)–2 through –7 and 4(a)–1.iii and.iv. Proposed comment 4(a)–4 described which financial institution reports a covered loan or application when more than one institution is involved in reviewing a single application and provided illustrative examples. Proposed comment 4(a)–5 discussed reporting responsibilities when a financial institution makes a credit decision through the actions of an agent. The Bureau is adopting comment 4(a)–4, renumbered as comments 4(a)–2 and –3, with changes to address certain industry comments, discussed below. The Bureau received no comments on proposed comment 4(a)–5 and is adopting it as proposed, renumbered as comment 4(a)–4.

Two industry commenters stated that they supported proposed comment 4(a)–4. Other industry commenters expressed concerns with proposed comment 4(a)–4. One industry commenter pointed out that loans originated as part of a State housing finance agency (HFA) program may not be reported under the proposed commentary because under those programs the State HFA, which the commenter asserted may not be required to report HMDA data, usually makes the credit decision. Another industry commenter urged the Bureau to allow more than one institution to report the same origination.

The Bureau recognizes that some applications and loans will not be reported under proposed comment 4(a)–4, finalized as comments 4(a)–2 and –3, if the institution making the credit decision is not a financial institution required to report HMDA data. However, the Bureau believes that it is appropriate to limit reporting responsibilities to the financial institution that makes the credit decision. Requiring that only one institution report the origination of a covered loan eliminates duplicate data. For example, if more than one financial institution reported the same origination, the total origination volume for a particular census tract would appear higher than the actual number of loans originated in that tract. On balance, the Bureau concludes that only the financial institution that makes the credit decision should report an origination.

Other industry commenters asked for examples of how to report a loan or application involving more than two institutions. The Bureau has added an example to proposed comment 4(a)–4, finalized as comment 4(a)–3, to illustrate financial institutions' reporting responsibilities when multiple institutions are involved. The example demonstrates that more than one financial institution will report the action taken on the same application if the same application is forwarded to multiple institutions. However, only one financial institution will report the loan as an origination.

An industry commenter sought clarification about what is meant by application for the purposes of the proposed comment. Section 1003.2(b) defines application for purposes of Regulation C and, accordingly, for purposes of § 1003.4(a) and its commentary. The Bureau is modifying proposed comment 4(a)–4, finalized as comments 4(a)–2 and –3, to clarify that § 1003.4(a) requires a financial institution to report data on applications that it receives even if the financial institution received an application from another financial institution rather than directly from an applicant.

In addition, a trade association asked the Bureau to clarify the reporting responsibilities when a credit union contracts a credit union service organization (CUSO) to perform loan origination services. The commentary to the final rule addresses these situations. Comment 4(a)–2 explains that the institution that makes the credit decision prior to closing or account opening reports that decision.

Accordingly, if a credit union makes a credit decision prior to closing or account opening, then the credit union reports that decision. In addition, comment 4(a)–3.v addresses situations when a financial institution (in this case the CUSO) makes a credit decision using the underwriting criteria of a third party (in this case the credit union). In that case, if the CUSO makes a credit decision without the credit union's review before closing, the CUSO reports the credit decision. However, if the CUSO approves the application acting as the credit union's agent under State law, comment 4(a)–4 clarifies that the credit union is required to report the actions taken through its agent.

Purchased Loans

In 2010, the FFIEC issued a publication in which it noted that repurchases qualify as purchases for Regulation C, and provided guidance on how and when to report such purchases.[252] The Bureau proposed to incorporate this guidance into Regulation C by adding new comment 4(a)–5 to clarify that covered loans that had been originated by a financial institution, sold to another entity, and subsequently repurchased by the originating institution should be reported under Regulation C unless the sale, purchase, and repurchase occurred within the same calendar year. When the FFIEC publication was issued, data users could not reliably identify repurchased loans within HMDA data because each loan was reported with a unique application or loan number, even if it was a loan being repurchased. Thus loans repurchased and reported multiple times within the same calendar year would distort the annual HMDA data, because the characteristics of those loans would be represented multiple times within the data. For the reasons discussed below, the Bureau is not adopting comment 4(a)–5 as proposed and, instead, is revising it to require the reporting of most repurchases as purchased loans regardless of when the repurchase occurs.

Most commenters opposed the Bureau's proposal. Some industry commenters argued that repurchases should never be reported, even outside of the calendar year in which the loan was originated. Some industry commenters argued that the calendar year exception would negatively affect CRA ratings for some financial institutions that temporarily purchase CRA-eligible loans under certain lending arrangements. Other industry commenters argued that any reporting of repurchases would inflate CRA ratings by allowing the loans to appear in a financial institution's HMDA data more than once. However, a few commenters supported the Bureau's proposal and argued that repurchases should be considered purchases for purposes of HMDA except for when the repurchase occurs within the same calendar year as the loans were originated.

The Bureau recognizes that the one-calendar-year reporting exception in the FFIEC guidance has led to inconsistent reporting of repurchased loans, because loans originated late in a calendar year and repurchased early in the succeeding calendar year are reported as loan purchases, while loans originated early in a calendar year and repurchased within the same calendar year are not reported. The Bureau also understands that there have been questions concerning the scope of the guidance and whether various scenarios constitute a repurchase or are addressed by the guidance.

The Bureau has determined that repurchases of covered loans should be reported as loan purchases, with only a narrow exception discussed below. The Bureau believes that the one-calendar-year reporting exception, which was based on guidance originally published by the FFIEC, will no longer be needed in light of other elements of the final rule.[253] The universal loan identifier (ULI), as adopted in § 1003.4(a)(1)(i), will enable a loan to be identified in the HMDA dataset through multiple HMDA reporting events and the repurchase reporting event could be identified and not included in an analysis or compilation of HMDA data focused on originated loans or annual market volume. Repurchases after the origination and sale of a covered loan to a secondary market investor still effect a transfer of legal title to the covered loan, which then could be held in portfolio by the originating institution or sold to another secondary market investor later. Information about these transfers should be reflected in HMDA as purchases, just as the original purchase is, so that the information may be included in the HMDA dataset to further the purposes of HMDA, and so that the ULI may be used effectively to monitor covered loans through their lifecycle.

In addition, if repurchase data are not included, there could be gaps in the history of a covered loan. The Dodd-Frank Act also requires the U.S. Securities and Exchange Commission to prescribe regulations that require securitizers to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer.[254] The Bureau believes that the usefulness of the HMDA data would be enhanced by having repurchases included so that information could be available through multiple HMDA reporting events.

For the reasons discussed above, the Bureau is adopting comment 4(a)–5 with modifications. However, the Bureau is creating an exception for certain assignments of legal ownership of covered loans through interim funding arrangements that operate as the functional equivalent of warehouse lines of credit because they may not truly reflect sales and purchases of covered loans. These interim funding agreements are used as functional equivalents of warehouse lines of credit where legal title to the covered loan is acquired by the party providing interim funding, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. The Bureau does not believe that these arrangements should require reporting under Regulation C given the temporary nature of the transfer and the intent of the arrangement. Therefore, pursuant to HMDA section 305(a) the Bureau is incorporating an exception into comment 4(a)–5 for such agreements so that such activity will not be reported under Regulation C. This exception is necessary and proper to effectuate HMDA's purposes, because reporting of these transfers in addition to reporting of the underlying originations, subsequent purchases, and any repurchase at a later date may distort HMDA data without providing meaningful information that furthers HMDA's purposes. This exception will also facilitate compliance for financial institutions.

Other Technical Modifications

The Bureau also proposed technical modifications to 4(a) and proposed comment 4(a)–1. The Bureau received no comments on the proposed changes to 4(a) and proposed comment 4(a)–1 and is adopting them as proposed, with minor modifications. The Bureau is also moving comments 4(a)–1.iv, –2, and –3 to the commentary to § 1003.4(f) to clarify a financial institution's

[252] Fed. Fin. Insts. Examination Council, CRA/HMDA Reporter, *Changes Coming to HMDA Edit Reports in 2010,* at 5 (Dec. 2010), *available at http://www.ffiec.gov/hmda/pdf/10news.pdf.*

[253] *Id.*

[254] Dodd-Frank Act section 943; *see also* 17 CFR 240.15Ga–1.

obligation to record data on a quarterly basis.

Number of Data Points

As detailed in the section 1022 discussion below, currently Regulation C requires reporting of approximately 35 separate pieces of information, and allows for optional reporting of three denial reasons. The Dodd-Frank Act amended HMDA by enhancing two existing data points (rate spread and application ID) and identifying 11 new data points, which the Bureau proposed to implement with 22 data fields. The Bureau also proposed to require financial institutions to report 13 additional data points not identified in the Dodd-Frank Act, implemented with 28 data fields, and to modify and expand some of the existing Regulation C data fields. Also detailed in the section 1022 discussion below, while the Bureau estimates that the incremental cost of each additional data point and associated data fields is small, the Bureau acknowledges that there are variable costs, one-time costs, and ongoing costs associated with the additional data points when considered collectively. The Bureau considered this in developing the proposal and proposed only those additional data points that the Bureau believes have sufficient value to justify the costs. As discussed below, the Bureau is not dramatically changing the number of the proposed data points, either by not adopting a substantial number of those that were proposed or by adopting substantially more than the number that were proposed. The number of data fields implementing some of the data points has increased based on changes the Bureau has adopted for the final rule.

Some industry commenters stated that the Bureau should only require data points that were specifically defined in the Dodd-Frank Act. Some industry commenters also suggested removing data points currently required under Regulation C. Some industry commenters stated that the Bureau should only require certain financial institutions to report data points not specifically defined in the Dodd-Frank Act, such as institutions that had been found to be in violation of fair lending laws, HMDA, or the CRA, or institutions that exceed certain asset-size or loan-volume thresholds. Some industry commenters stated that the Bureau should conduct additional analysis on the value of the proposed data points before deciding whether to adopt them. Many consumer advocate commenters argued that the Bureau's proposal did not require enough information to be reported, and that additional information would be required to fulfill HMDA's purposes. Some industry and other commenters also suggested additional data points. Collectively these commenters suggested more than 45 additional data points. Some industry commenters and consumer advocate commenters stated that the Bureau's proposal was reasonable and measured in terms of the number of data points and made sense given the current mortgage market.

The Bureau has analyzed the proposed data points carefully in light of the comments received and other considerations and believes that the data points adopted in this final rule each significantly advance the purposes of HMDA and are warranted in light of collection burdens. Each such data point is discussed below in the section-by-section analysis. The Bureau has authority to expand the data points collected to include such other information as it may require under HMDA section 304(b)(5)(D) and (b)(6)(J). As discussed below throughout the section-by-section analysis, the Bureau is adopting many of the data points proposed, modifying certain data points based on feedback received from commenters, and not finalizing certain proposed data points.

Regarding the comments suggesting criteria or thresholds for reporting additional data points, the Bureau does not believe that it would be appropriate to condition the reporting of such data points on such criteria. The Bureau believes that the data points proposed to be reported fulfill HMDA's purposes and that limiting reporting of them to only some financial institutions would limit the usefulness of the data. Limiting reporting of certain information to financial institutions that had a history of violating certain laws would compromise the usefulness of the HMDA data because that information would not be available from other financial institutions, precluding the generating of a representative (presumptively non-violative) sample of the market for statistical comparison. Limiting reporting of certain information by asset size or loan volume would also undermine the utility of the HMDA data, because financial institutions that would fall under any threshold may have different characteristics and lending practices that would then not be visible through HMDA data. Financial institutions have different business models and underwriting practices which can, in part, be based on their asset size or loan volume. Excluding certain financial institutions would potentially exclude information about covered loans with different characteristics or information related to differences in underwriting practices and would create data that is not uniform. This would not only undermine HMDA's purposes, but limit information available to policymakers in considering how legal requirements should apply to different business models and underwriting practices.

The Bureau also considered the additional data points suggested by commenters. As discussed below throughout the section-by-section analysis, certain data points have been modified to take into account some of these suggestions. The Bureau is not adopting many of these data points because it does not believe it has sufficient information at this time to determine whether adding them would serve HMDA's purposes and be warranted in light of collection burdens. Others the Bureau believes would be duplicative of, or would provide information only marginally different than, data points adopted in the final rule. Because many of these comments proposed data points similar to ones proposed by the Bureau, the responses to many of these comments are discussed below in the section-by-section analysis for the data point being finalized most relevant to those suggestions.

4(a)(1)

4(a)(1)(i)

HMDA section 304(b)(6)(G), as amended by Dodd-Frank Act section 1094(3)(A)(iv), authorizes the Bureau to require a universal loan identifier, as it may determine to be appropriate.[255] Existing § 1003.4(a)(1) requires financial institutions to report an identifying number for each loan or loan application reported. The current commentary to § 1003.4(a)(1) strongly discourages institutions from using the applicant's or borrower's name or Social Security number in the application or loan number. The current commentary also requires the number to be unique within the institution, but does not provide guidance on how institutions should select ''unique'' identifiers. The Bureau proposed to implement HMDA section 304(b)(6)(G) by replacing the current HMDA loan identifier with a new self-assigned loan or application identifier that would be unique throughout the industry rather than just within the reporting financial institution, would be used by all financial institutions that report the loan or application for HMDA purposes,

[255] 12 U.S.C. 2803(b)(6)(G).

and could not be used to directly identify the applicant or borrower. The Bureau believes a reasonable interpretation of ''universal loan identifier'' in HMDA section 304(b)(6)(G) is that the identifier would be unique within the industry. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(1)(i) generally as proposed requiring entities to provide a universal loan identifier (ULI) for each covered loan or application. The Bureau is adding separate paragraphs to address purchased covered loans and applications that are reconsidered or reinstated during the same calendar year. In addition, as discussed below, the Bureau is adding a paragraph requiring a check digit as part of the ULI.

The Bureau solicited comment on whether the proposed changes to the loan or application identifiers used for HMDA reporting are appropriate. Most industry commenters expressed concern that the proposed ULI would introduce unnecessary complexities in the HMDA reporting process. Several industry commenters stated that requiring institutions to reinvent current loan numbering procedures would result in significant implementation costs because it would require a programming change to current operation systems, such as an institution's loan origination software. Industry commenters pointed out that most institutions assign loan numbers based on a certain order, such as the order the application was received, and furthermore that creditors may include information within the loan number that is pertinent to the institution's operations. For example, an industry commenter stated that its loan origination software assigns numbers randomly but uses a unique identifier for originations and a unique identifier for all other loans not originated. The Bureau acknowledges that the proposed ULI may pose operational challenges for financial institutions. However, the Bureau believes that the benefits that can be gained from the use of a ULI, including the potential ability to track an application or loan over its life and to help in accurately identifying lending patterns across various markets justify the burden associated with implementing a ULI. Additionally, the Bureau understands that financial institutions need flexibility for organizational purposes, such as the flexibility to assign loan numbers that include numbers that would represent product type. With this in mind, the Bureau proposed that the ULI would consist of up to an additional 25 characters that follow the Legal Entity Identifier (LEI) to identify the covered loan or application. The Bureau believes that this approach provides financial institutions with the flexibility to accommodate organizational purposes when assigning loan numbers, except that the additional 25 characters must not include any information that could be used to directly identify the applicant or borrower.

Currently, institutions assign alphanumeric identifiers, with up to 25 characters, to identify a covered loan or application. The Bureau proposed a maximum 45-character ULI. The first 20 characters would be comprised of the LEI followed by up to 25 characters, which would represent the unique sequence of characters to identify the covered loan or application, and may be letters, numerals, symbols, or a combination of letters, numerals, and symbols. A trade association recommended that the ULI be lengthened to 65 characters, as opposed to the proposed 45. An industry commenter stated that an institution could run out of identifiers quickly with the proposed maximum. The Bureau believes that lengthening the proposed ULI may benefit some institutions with large loan volumes that may use certain characters in the ULI to represent business lines or branches, but, at the same time, a ULI longer than 45 characters may be burdensome for other financial institutions. The Bureau believes the right balance between flexibility and usability is a maximum of 45 characters in the ULI, with the first 20 characters representing the LEI.

A few commenters expressed concerns regarding the potential errors that could arise in a loan identifier as long as 45 characters. One commenter stated that manual input of a 45-digit loan identifier will likely result in typos while another commenter suggested that manual input would need to take place to ensure accurate information because there is potential room for error with a 45-character loan identifier. To address the potential errors that could arise, an industry commenter recommended that the Bureau consider adding a check-digit requirement to the ULI. A check digit is used to validate or verify that a sequence of numbers or characters, or numbers and characters, are correct. A mathematical function is applied to the sequence of numbers or characters, or numbers and characters, to generate the check digit. This mathematical methodology could then be performed at a point in the HMDA process to ensure that the check digit resulting from performing the mathematical methodology on the sequence of letters or numerals, or letters and numerals, matches the check digit in the ULI. Implementation of a check digit can help ensure that the sequence of characters assigned to identify the covered loan or application are persistent throughout the HMDA process. For example, at the application stage, a financial institution assigns the ULI, which consists of the financial institution's LEI, a 23-character unique sequence of letters and numerals that identify the application, and a 2-character check digit. Once the application is complete, the file is transferred to another division of the financial institution where it will be handled by other staff. To ensure that the ULI was transferred correctly, the mathematical function could be performed to obtain the check digit and ensure that it matches the check digit in the ULI. This would ensure that the ULI does not contain an error due to typos or transposition of characters as a result of manual entry or file transfer errors. If the check digit resulting from the performed mathematical function does not match the check digit in the ULI, then it would be an indication to staff that an error in the ULI exists. Adding a check digit requirement in the ULI also benefits the file transfer process between financial institutions. For example, a file transfer process could be initiated because the loans are sold to another financial institution. The financial institution that originated the loans electronically transmits to the financial institution that purchases the loans the applicable information, including the ULI, related to the loans. Although an electronic transmission reduces the incidence of errors, it is not guaranteed because of the likelihood that the institutions use different systems to capture the data and therefore, the financial institution that purchased the loans may need to implement specific software to intake the data. In addition, unlike other information related to the loan that can undergo a quality control process through the implementation of business logic and statistical analyses, the ULI does not contain information that would make it possible to ensure that the ULI transferred is valid through the application of business logic or statistical analyses. Therefore, implementation of a check digit can help ensure that the ULI was transferred correctly.

The check-digit requirement would enable financial institutions to quickly identify and correct errors in the ULI, which would ensure a valid ULI, and therefore enhance data quality. Check digits are currently implemented in

certain identifiers, such as vehicle identification numbers, which function as a check against transcription errors.[256] The national unique health plan identifier implemented by the U.S. Department of Health and Human Services also incorporates a check digit.[257] The Bureau believes that the benefits of a check digit in the ULI justifies the additional burden associated with implementing a check digit.

The Bureau is publishing in this final rule new appendix C that includes the methodology for generating a check digit and instructions on how to validate a ULI using the check digit. The methodology is adapted from Mod 97–10 [258] in the international standard ISO/IEC 7064, which is published by the International Organization for Standardization (ISO).[259] ISO/IEC 7064 specifies check character systems that can detect errors in a string of characters that are the result of data entry or copy errors.[260] Specifically, ISO/IEC 7064 check character systems can detect errors caused by substitution or transposition of characters. For example, the check digit can detect a transposition error such as when two adjacent numbers are transposed or when a single character is substituted for another. The Bureau believes that the identification of these types of errors will enhance data quality and reduce burden in the long run for institutions because the errors can be identified early in the process. To reduce burden, the Bureau plans to develop a tool that financial institutions may use, at their option, to assist with check digit generation.

For the reasons stated above, the Bureau adopts as final the requirement to include a check digit to the ULI. In order to maintain the maximum 45-character ULI, the Bureau is also modifying the maximum number of additional characters to identify the covered loan or application and reducing it from the proposed 25 to 23.

Several industry commenters suggested that the Bureau should consider using the MERS Mortgage Identification Number (MIN) as the core of the ULI.[261] The MIN is an 18-digit number registered on the MERS System. The first seven digits of the 18-digit MIN number would be the financial institution's identification number assigned by MERS. The next 10 digits would be assigned by the financial institution and the last digit serves as a check digit. One commenter stated that uniqueness is important in a loan number and that the MIN could guarantee uniqueness because it is registered with the MERS System. The MIN is usually issued at origination but may be issued at application. For the reasons discussed below, the Bureau is not adopting a ULI that uses the MIN as the core.

First, a rule that prescribes the MIN as the core would require all financial institutions reporting HMDA data to register with MERSCORP and obtain an organization number assigned by MERSCORP. This organization number would not be able to serve the same function as the LEI described in the section-by-section analysis of § 1003.5(a)(3) below because there would not be a way to link HMDA-reporting institutions with their corporate families using the MERS identification number. Second, the 10-digit number assigned by the institution that would serve as the identification number that can be used to identify and retrieve the loan application would not provide the same flexibility as the maximum 23-character that the ULI provides. Some financial institutions may need more than 10 digits to identify and retrieve a loan application because certain characters in the loan number may represent branches or business lines. For these reasons, the Bureau is not adopting a ULI that uses the MERS MIN as the core.

Some industry commenters suggested that the ULI should be identical to the loan identification number prescribed by the 2013 TILA–RESPA Final Rule. That rule provides that the loan identification number is a number that may be used by the creditor, consumer, and other parties to identify the transaction.[262] *See* Regulation Z § 1026.37(a)(12). Although the burden on industry would be mitigated if the Bureau required that financial institutions use the same loan identification number for HMDA reporting as the loan identification number in the TILA–RESPA disclosures, the Bureau believes that an application number that may meet the TILA–RESPA standards may not be appropriate for HMDA reporting. Section 1026.37(a)(12) does not limit the number of characters in the loan application number. The lack of limitation enables creditors to assign as many characters in the loan application number as they want, which could result in compliance challenges for users of the ULI. For example, if an institution purchases a loan with a 60-character application number assigned by the institution that originated the loan pursuant to § 1026.37(a)(12), the institution that purchased the loan would need to make updates to their system to accommodate a 60-character ULI in order to report the purchased loan under HMDA if the purchasing institution's system was programmed to handle ULIs with a maximum number of 45 characters pursuant to Regulation C. For these reasons, the Bureau is not adopting a rule that would enable institutions to use the TILA–RESPA loan application number for the ULI. The Bureau notes, however, that the loan application number requirements in the TILA–RESPA rule are not necessarily incompatible with the ULI. Therefore, a financial institution may generate a ULI for both HMDA and TILA–RESPA.

The Bureau also proposed that the ULI may consist of letters, numbers, symbols, or a combination of letters, numbers, and symbols. While the Bureau did not receive any comments regarding the use of letters or numbers, the Bureau received a comment from industry stating that symbols may contain embedded special characters that could potentially result in interference with applications or programs that use the ULI. In addition, certain symbols may not be recognized by certain programs that use HMDA data. The commenter suggested that the Bureau should provide a list of symbols that are permissible in the ULI or provide a list of symbols that are not permissible in the ULI. After considering the comment, the Bureau concluded that symbols in the ULI can potentially present challenges for financial institutions and data when reporting or analyzing HMDA data. Therefore, the final rule does not permit the use of symbols, as in proposed § 1003.4(a)(1)(i)(B)(1). The Bureau is adopting a final rule that provides that

[256] *See* 73 FR 23367, 23369 (Apr. 30, 2008).

[257] *See* 77 FR 54664, 54675 (Sept. 5, 2012).

[258] Mod 97–10 applies the mathematical function modulus, which is defined by ISO as an integer used as a divisor of an integer dividend in order to obtain an integer remainder.

[259] ISO is the world's largest developer of international standards and has published over 19,500 standards that cover aspects of business and technology. ISO is comprised of national standards bodies from 162 member countries. More information about ISO and the standards is available at *http://www.iso.org/iso/home.html*.

[260] Int'l. Org. for Standards, *ISO/IEC 7064:2003, Information technology-Security techniques-Check character systems* (Feb. 15, 2003), *http://www.iso.org/iso/home.html*.

[261] The MERS System is owned and managed by MERSCORP Holdings, Inc., an industry-owned and privately held corporation. According to MERSCORP, the MERS System is a national electronic database that tracks changes in mortgage servicing and beneficial ownership interests in residential mortgage loans on behalf of its members.

[262] *See* 78 FR 79730 (Dec. 31, 2013). The rule is effective on October 3, 2015 and applies to transactions for which the creditor or mortgage broker receives an application on or after that date.

the maximum number of characters in the ULI must be 45, with the first 20 characters representing the LEI followed by up to 23 additional characters that may be letters, numerals, or a combination of both, and a 2-character check digit.

The Bureau explained in the proposal that the current identifier requirement makes it difficult to track an application or loan over its life. Commenters, including industry, consumer advocates, and trade associations, supported the proposed ULI because it would require a financial institution that reports HMDA data and that reports a purchased loan to report the same ULI that was previously reported under HMDA by the financial institution that originated the loan. One commenter stated that the ULI will enable a much better understanding of how the market works and how loans perform. Another commenter pointed out that the ULI is the single most useful addition for regulators to assess what happens after a loan is originated, from servicer changes to secondary mortgage market activity. Another commenter supporting the proposed ULI argued that a ULI that follows a loan through various permutations may help shed light into which racial and ethnic minority homeowners may be disproportionately subjected to predatory lending, foreclosure, fraud, and underwater mortgages.

A commenter that supported the ULI stated that issues regarding the ULI could arise in a transaction that involves a purchased covered loan. Specifically, the commenter noted that the proposal did not specify which entity assigns the ULI at the initial reporting of the covered loan, particularly if a quarterly reporter purchased the loan and reports it prior to the annual reporter that originated the loan. The Bureau recognizes that the proposal may have created confusion regarding the ULI on purchased covered loans. To eliminate the confusion, the Bureau is adding § 1003.4(a)(1)(i)(D) to address purchased covered loans. Section 1003.4(a)(1)(i)(D) provides that a financial institution that reports a purchased covered loan must use the ULI that was assigned or previously reported for the covered loan. For example, if a quarterly reporter pursuant to § 1003.5(a)(1)(ii) purchases a covered loan from a financial institution that is an annual reporter and that submits data annually pursuant to § 1003.5(a)(1)(i), the quarterly reporter that purchased the covered loan must use the ULI that the financial institution that is an annual reporter assigned to the covered loan. Additionally, the Bureau is adding § 1003.4(a)(1)(i)(E) to address the option for using the same ULI for an original and reinstated or reconsidered application that occur during the same calendar year. For example, assume a quarterly reporter pursuant to § 1003.5(a)(1)(ii) takes final action on an application in the first quarter and submits it with its first quarter information. If in the second quarter during the same calendar year, the financial institution reconsiders the application and takes final action in the second quarter that is different from that in the first quarter, the financial institution may use the same ULI that was reported in its first quarter data. The Bureau believes that providing this option for financial institutions will reduce burden associated with assigning a new ULI for a later transaction that a financial institution considers as a continuation of an earlier transaction.

The Bureau proposed § 1003.5(a)(3) to require a financial institution to provide an LEI when the financial institution reports its data. Section 1003.5(a)(3) also describes the issuance of the LEI. The Bureau is adopting the requirement in § 1003.5(a)(3) to require a financial institution to provide its LEI when reporting its data, as discussed in detail below in the section-by-section analysis of § 1003.5(a)(3). However, the Bureau is making a technical change and moving the description of the issuance of the LEI to § 1003.4(a)(1)(i)(A) for ease of reference. See the section-by-section analysis of § 1003.5(a)(3) below for more information.

For these reasons and those above, the Bureau is adopting § 1003.4(a)(1)(i) generally as proposed, with modifications related to symbols and the number of characters, the issuance of the LEI, additional clarification related to purchased covered loans and previously reported applications, and the addition of the check digit requirement.

The Bureau solicited feedback regarding hashing as an encryption method for the ULI. The Bureau also solicited feedback on salting in addition to hashing to enhance the encryption. One industry commenter recommended that the Bureau finalize hashing and salting while most other industry commenters opposed such a requirement arguing that it would not provide any benefit but would entail an additional cost, including expertise and resources. After considering the comments, the Bureau has concluded that the benefits of hashing and salting would not be sufficient to justify the costs of such requirements. Accordingly, the Bureau is not adopting a requirement that the ULI must be encrypted using a hash algorithm.

Proposed comment 4(a)(1)(i)–1 clarified the uniqueness requirement of the ULI. The Bureau did not receive any comments on proposed comment 4(a)(1)(i)–1, which is adopted generally as proposed, but with technical modifications. The Bureau did not receive feedback on comment 4(a)(1)(i)–2, which provided guidance on the ULI's privacy requirements, and is adopted as proposed. The Bureau is also adopting new comments 4(a)(1)(i)–3 through –5 to provide guidance and illustrative examples for the ULI on purchased covered loans and reinstated or reconsidered applications, and guidance on the check digit.

4(a)(1)(ii)

The Bureau proposed § 1003.4(a)(1)(ii) to provide for reporting of the date the application was received or the date shown on the application form. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(1)(ii) as proposed with minor revisions to the associated commentary.

Some commenters requested additional guidance on reporting application date. Many of these comments stated that application date is difficult to report for commercial loans, because the application process is much more fluid than in consumer lending and an application form may not be formally completed until the end of the application process for some commercial loans. These concerns will be reduced by the Bureau's decision to generally maintain reporting of dwelling-secured, commercial-purpose transactions at its current level as discussed above in the section-by-section analysis of § 1003.3(c)(10). For those commercial loans that will be required to be reported, the definition of application, combined with the ability to rely on the date shown on the application form, permits sufficient flexibility for financial institutions to report application date for commercial loans.

A commenter suggested that instead of reporting application date financial institutions should report only the month of application to ease compliance. The Bureau believes such a change would reduce the data's utility. Because interest rates can change more rapidly than monthly, and policies or criteria that affect the action taken on applications can change during a calendar month, it is important to have a more complete application date reporting requirement so that loans can be grouped appropriately for analysis.

Therefore, the Bureau is finalizing § 1003.4(a)(1)(ii) as proposed, and finalizing comment 4(a)(1)(ii)–1 as proposed with minor revisions to provide additional guidance on reporting application date when multiple application forms are processed. The Bureau received no specific feedback on comment 4(a)(1)(ii)–2 and is finalizing it as proposed. The Bureau is adding additional language to comment 4(a)(1)(ii)–3 for clarity. The Bureau is deleting comment 4(a)(ii)–4, because it is duplicative of comment 4(a)(8)(i)–14.

4(a)(2)

HMDA section 304(b)(1) requires financial institutions to report the number and dollar amount of mortgage loans which are insured under Title II of the National Housing Act or under Title V of the Housing Act of 1949 or which are guaranteed under chapter 37 of Title 38. The Bureau proposed to retain the current reporting requirement, but incorporate the text of the statutory provision, with conforming modifications, directly into Regulation C. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(2) with modifications to maintain consistency with the current reporting requirement.

Commenters suggested various changes to the requirement, including aligning it with similar categories in other regulations, including new categories, or exempting certain types of covered loans from the requirement. A few commenters suggested adding an additional enumeration for State housing agency loans. Because many loans that State housing agencies are involved with are also insured or guaranteed by FHA or another government entity, the Bureau does not believe that adding an additional enumeration would accurately capture State housing agency loans without requiring financial institutions to select multiple categories, which would add additional burden and complexity.

Other commenters suggested aligning to the Regulation Z § 1026.37(a)(10)(iv) loan type categories, which would remove the category for USDA Rural Housing Service and Farm Service Agency loans and combine it with State housing agency loans under an ''other'' category. The Bureau believes that the less burdensome approach is to maintain the current category for USDA Rural Housing Service and Farm Service Agency loans and not adopt a new category incorporating multiple types of covered loans.

Some commenters also argued that commercial loans should be exempted from this requirement, or that a Small Business Administration enumeration should be added. The Bureau is adopting a reporting requirement to identify covered loans primarily for a business or commercial purpose as discussed in the section-by-section analysis of § 1003.4(a)(38) below and therefore believes it would be largely duplicative to add a reporting requirement specifically for Small Business Administration loans, especially considering that such loans are not specifically identified by HMDA section 304(b)(1).

After considering the comments and conducting additional analysis, the Bureau is finalizing § 1003.4(a)(2) with modifications. The Bureau is specifying the name of the government insurer or guarantor instead of the chapter or title of the United States Code or statute under which the loan is insured or guaranteed as specified in the statutory text to maintain consistency with current reporting requirements provided in appendix A to Regulation C. Federal Housing Administration Title I loans would be reported as FHA loans in addition to Title II loans. Because Title I loans include many manufactured housing loans, the Bureau is concerned that if the proposal were finalized as proposed, Title I manufactured housing loans would have been reported as conventional loans which would not clearly distinguish them from home-only manufactured home loans not insured by FHA.

4(a)(3)

Current § 1003.4(a)(3) requires financial institutions to report the purpose of a loan or application using the categories home purchase, home improvement, or refinancing. The Bureau proposed only technical modifications to § 1003.4(a)(3) to conform to proposed changes in transactional coverage and to add an ''other'' category, but sought comment regarding whether the loan purpose reporting requirement should be modified with respect to home improvement loans and cash-out refinancings. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(3) with modifications to include a cash-out refinancing category and to make changes to the commentary to implement this additional category and provide instructions for reporting covered loans with multiple purposes.

Some commenters addressed the home improvement loan purpose reporting requirement. One commenter suggested that the loan purpose be simplified to track only whether a loan was for purchase of a dwelling or not, as discerning a borrower's intent can be difficult. Other commenters also stated that determining home improvement purpose can be difficult for cash-out refinancings and other loans, and various commenters recommended eliminating the home improvement purpose category. However, some commenters supported requiring financial institutions to identify loans and applications with a home improvement purpose. The Bureau believes that the home improvement purpose continues to be an important indicator of home financing available for home improvements, and therefore is preserving that loan purpose category in this final rule.

The Bureau solicited comment on the utility and feasibility of requiring a cash-out refinancing purpose, as distinct from refinancings generally. Many commenters stated that cash-out refinancings do not have a standardized definition in the industry and can vary by loan program or financial institution. Some commenters argued that definitional problems would make any reporting requirement difficult. A few commenters argued that the most the Bureau should require would be to report whether the financial institution considered the loan or application to be a cash-out refinancing rather than trying to establish a specific definition for HMDA purposes alone.

Other commenters stated that reporting of cash-out refinancings would enhance the HMDA data by shedding light on borrowers taking equity out of their homes and differentiate these refinancings from rate-and-term refinancings in the data. Some commenters also noted that there is often a pricing difference between cash-out refinancings and other refinancings and that differentiating them in the data would be helpful.

One commenter stated that the Bureau should adopt an additional data point for Regulation C indicating the amount of cash received by the consumer at closing. The Bureau does not believe it would be appropriate to adopt a specific additional data point for cash received by the consumer at closing at this time. The amount of cash received might not be a true indicator of whether the loan was considered or priced as a cash-out refinancing, because some financial institutions and loan programs allow for a limited amount of cash to be received in rate-and-term refinancings. However, the Bureau believes that differentiating cash-out refinancings in HMDA data will be valuable because there are often significant differences in rates or fees between cash-out refinancings and rate-

and-term refinancings.[263] These differences might not otherwise be distinguishable in the HMDA data and could appear to be a result of discrimination in a fair lending analysis if the distinction could not be controlled for.

Therefore, pursuant to HMDA sections 305(a) and 304(b)(6), the Bureau is finalizing § 1003.4(a)(3) with the addition of a cash-out refinancing loan purpose. The Bureau believes this addition will carry out HMDA's purposes, by, for example, assisting in enforcing antidiscrimination statutes. The Bureau is adopting new comment 4(a)(3)–2 to provide guidance on reporting cash-out refinancings. This comment provides that a financial institution reports a covered loan or an application as a cash-out refinancing if it is a refinancing as defined by § 1003.2(p) and the institution considered it to be a cash-out refinancing in processing the application or setting the terms under its guidelines or an investor's guidelines. This comment also provides illustrative examples.

Some commenters stated that the Regulation C loan purpose categories should be aligned with the loan purpose categories in Regulation Z § 1026.37(a)(9). HMDA section 304(b) requires the disclosure of home improvement loans, which is not a loan purpose under Regulation Z § 1026.37(a)(9). Further, the Bureau is adopting a cash-out refinancing loan purpose category for Regulation C as discussed above, whereas Regulation Z § 1026.37(a)(9) contains only a refinancing purpose. Because these differences are important for the purposes of Regulation C, the Bureau does not believe that aligning § 1003.4(a)(3) with Regulation Z § 1026.37(a)(9) would be appropriate.

After considering the comments and conducting additional analysis, the Bureau is finalizing § 1003.4(a)(3) with modifications to include cash-out refinancings. Comment 4(a)(3)–1, which is part of current Regulation C but was not included in the proposal, is adopted with changes to provide additional guidance for reporting the ''other'' category. Comment 4(a)(3)–2 is generally adopted as proposed, with conforming changes related to the addition of the cash-out refinancing purpose and renumbered as 4(a)(3)–3. Comment 4(a)(3)–3 provides guidance on reporting covered loans that would qualify under multiple categories under the § 1003.4(a)(3) reporting requirement. The revised comment would provide that a covered loan that is both a cash-out refinancing or a refinancing and a home improvement loan should be reported as a cash-out refinancing or refinancing. The Bureau believes that this will make the cash-out refinancing and refinancing reporting categories more valuable by clearly identifying loans that are considered cash-out refinancings or refinancings whether or not they are for home improvement. Proposed comment 4(a)(3)–3 is adopted with modifications related to the addition of the cash-out refinancing purpose and is renumbered as 4(a)(3)–4. The Bureau is adopting new comment 4(a)(3)–5 to provide guidance on reporting loan purpose under Regulation C for loans with a business or commercial purpose when such loans are not excluded from coverage.

4(a)(4)

Current § 1003.4(a)(4) requires financial institutions to identify whether the application is a request for a covered preapproval. The Bureau proposed to continue this requirement and proposed minor technical revisions to the instructions in appendix A. Comments related to preapprovals are discussed in the section-by-section analysis of § 1003.2(b)(2) and § 1003.4(a). The Bureau is finalizing § 1003.4(a)(4) with modifications to clarify the requirement.

Based on additional analysis, the Bureau is also finalizing new comment 4(a)(4)–1 to provide guidance on the requirement and to simplify the current reporting requirement. Currently appendix A provides three codes for reporting this requirement: Preapproval requested, preapproval not requested, and not applicable. The instructions provide that preapproval not requested should be used when an institution has a preapproval program but the applicant did not request a preapproval through that program and that not applicable should be used when the institution does not have a preapproval program and for other types of loans and applications that are not part of the definition of a preapproval program under Regulation C. The Bureau has found that it is a common error for financial institutions to incorrectly report not applicable instead of preapproval not requested. The information provided by distinguishing these situations is of limited value, and the Bureau believes that it will reduce compliance burden to no longer have separate reporting options based on this distinction. Comment 4(a)(4)–1 provides that an institution complies with the reporting requirement by reporting that a preapproval was not requested regardless of whether the institution has such a program and the applicant did not apply through that program or if the institution does not have a preapproval program as defined by Regulation C. The Bureau is also finalizing new comment 4(a)(4)–2 to provide guidance on the scope of the reporting requirement.

4(a)(5)

Regulation C currently requires reporting of the property type to which the loan or application relates as one- to four-family dwelling (other than manufactured housing), manufactured housing, or multifamily dwelling. The Bureau proposed to replace the requirement to report property type under § 1003.4(a)(5) with the requirement to report the construction method for the dwelling related to the property identified in § 1003.4(a)(9). For the reasons discussed below, the Bureau is adopting § 1003.4(a)(5) with modifications to remove the ''other'' reporting category and finalizing a new comment providing guidance on reporting construction method for manufactured home communities.

Some commenters supported the proposed changes and the treatment of modular housing. Other commenters argued that the current property type reporting requirement should be retained. A few commenters argued that the construction method and property type reporting requirement should be removed entirely. The Bureau does not agree that combining construction method and number of units as the current § 1003.4(a)(5) property requirement does is appropriate, and believes separating these concepts into two distinct requirements will provide data that better reflects how financial institutions are serving the housing needs of their communities.

The Bureau is therefore, pursuant to HMDA sections 305(a) and 304(b)(6)(J), finalizing § 1003.4(a)(5) generally as proposed, but with modifications. The Bureau believes that the modifications will carry out HMDA's purposes and facilitate compliance therewith by providing more detail regarding whether institutions are serving the housing needs of their communities and by better aligning reporting to industry standards. The Bureau is removing the ''other'' option for reporting of construction method, because, as discussed in the section-by-section analysis of § 1003.2(f), the Bureau is

[263] See, for example, Fannie Mae, *Loan-Level Price Adjustment Matrix* (July 1, 2015), *available at https://www.fanniemae.com/content/pricing/llpa-matrix.pdf*; Freddie Mac, *Bulletin 2015–6 Ex. 19 Postsettlement Delivery Fees* (Apr. 17, 2015), *available at http://www.freddiemac.com/singlefamily/pdf/ex19.pdf*.

finalizing the exclusion for many types of structures (such as recreational vehicles, houseboats, and pre-1976 mobile homes) that do not meet the definition of a manufactured home under § 1003.2(l). In light of this change, the Bureau believes that an ''other'' category is unnecessary. Proposed comment 4(a)(5)–1 is being adopted generally as proposed, with minor revisions for clarity. Proposed comment 4(a)(5)–2 is being adopted as proposed, renumbered as comment 4(a)(5)–3. The Bureau is also adopting new comment 4(a)(5)–2 to provide guidance on reporting the construction method for manufactured home communities. As discussed in the supplementary information to the proposed rule, the FFIEC had previously provided guidance to report the property type for manufactured home communities as manufactured housing.[264] Based on a review of recent HMDA data, the Bureau believes that, while some financial institutions are following this prior guidance, some financial institutions may not be. The Bureau therefore believes it will facilitate compliance to include a comment specifically on the topic of reporting construction method for covered loans secured by manufactured home communities.

A few commenters argued that additional information related to the construction of the dwelling should be reported. One trade association argued that the age of the dwelling should be reported in order to provide public data about housing finance as the housing stock ages, which would be helpful for understanding housing demand. Another commenter argued that individual condominium or cooperative units should be identified as such in HMDA data, which would facilitate housing research in large metropolitan areas. While both suggested modifications would improve the data, the Bureau does not believe that the benefits of these data would justify the burden at this time. However, the Bureau believes that with the requirement to report property address under § 1003.4(a)(9), it may be possible to derive a proxy for condominium and cooperative units from the fact that unit numbers generally are included as part of the property address for such units. The Bureau may explore whether it would be possible to include such data in the release of HMDA data.

[264] 79 FR 51731, 51768 (Aug. 29, 2014); Fed. Fin. Insts. Examination Council, CRA/HMDA Reporter, *Changes Coming to HMDA Edit Reports in 2010* (Dec. 2010), *available at http://www.ffiec.gov/hmda/pdf/10news.pdf.*

4(a)(6)

HMDA section 304(b)(2) requires the disclosure of the number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan. Current § 1003.4(a)(6) requires reporting the owner occupancy status of the property as owner-occupied as a principal dwelling, not owner-occupied as a principal dwelling, or not applicable. The Bureau proposed to require financial institutions to report whether a property will be used as a principal residence, as a second residence, as an investment property with rental income, or as an investment property without rental income. The Bureau proposed changes to appendix A to require distinguishing between investment properties with rental income and investment properties without rental income. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(6) with modifications to require reporting of whether the property is a principal residence, second residence, or investment property.

Some commenters generally supported reporting based on borrower occupancy rather than owner occupancy. Some commenters supported the additional category for second residences. Many commenters addressed the proposed investment property reporting requirement. Some commenters argued that the distinction between rental income and other investment properties would be burdensome and unnecessary. Some commenters also believed the example provided in comment 4(a)(6)–4 was inconsistent with the general exclusion for transitory residences in proposed comment 2(f)–2 (final comment 2(f)–3). Other commenters believed that the distinction would be helpful for research. Some commenters stated that investment properties with rental income would not be sufficient, that in addition it would be important for research to identify multi-unit dwellings where the borrower occupies one unit and rents the remaining units. The Bureau believes that multi-unit owner-occupied rental properties would be identifiable under the proposed reporting requirement as principal residences with more than one unit reported under the requirements of § 1003.4(a)(31).

The Bureau recognizes that the proposal's investment property distinction may pose compliance challenges and is inconsistent with some industry standards for categorizing occupancy. The Bureau is therefore finalizing § 1003.4(a)(6) with modifications. The Bureau is combining investment properties into a single category. The Bureau is also finalizing comment 4(a)(6)–4 with modifications to clarify that the example refers to a long-term residential property and to replace the proposed term ''owner'' with ''borrower or applicant'' for consistency with § 1003.4(a)(6) and comments 4(a)(6)–2 and –3.

The Bureau is finalizing proposed comment 4(a)(6)–5 regarding multiple properties as final comment 4(a)(6)–1. Current comment 4(a)(6)–1 also deals with multiple properties and the Bureau believes that the comments should be consolidated into final comment 4(a)(6)–1.

For the reasons stated in the preamble to the proposed rule, the Bureau believes that the finalized reporting requirement will provide valuable information about owner-occupancy for determining how financial institutions are serving the housing needs of their communities and the requirement as adopted will further understanding of how second homes and investment properties affect housing affordability and affect local communities.[265] The Bureau is therefore finalizing § 1003.4(a)(6) with modifications as discussed above to implement section 304(b)(2) of HMDA and pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA. The Bureau believes requiring this level of detail about residency status is a reasonable interpretation of HMDA section 304(b)(2). Furthermore, for the reasons

[265] The Bureau adopts its discussion of the benefits of this change provided in the preamble to the proposed rule. *See* 79 FR 51731 at 51768–69; *see also* Deborah Halliday, *You Can't Eat the View: The Loss of Housing Affordability in the West,* The Rural Collaborative at 9–10 (2003); Linda Venturoni, Northwest Council of Governments, *The Economic and Social Effects of Second Homes—Executive Summary* at 4–5 (June 2004) (stating that as the number of second homes in a community increases, the more the local economy will shift towards serving the needs of the second homes); Andrew Haughwout et al., Fed. Reserve Bank of New York, Staff Report No. 514, *Real Estate Investors, the Leverage Cycle, and the Housing Market Crisis,* at 21 (Sept. 2011); *see also, e.g.,* Allan Mallach, Urban Institute, *Investors and Housing Markets in Las Vegas: A Case Study,* at 32–34 (2013) (discussing that foreign real estate investors in Las Vegas are crowding out potential domestic purchasers); Robert D. Cruz and Ebony Johnson, Miami-Dade Cnty. Regulatory and Economic Resources Dept., *Research Notes on Economic Issues: Impact of Real Estate Investors on Local Buyers,* (2013) (analyzing how domestic first-time home purchasers are at a competitive disadvantage compared to foreign real estate investors); Kathleen M. Howley, Bloomberg, *Families Blocked by Investors from Buying U.S. Homes* (2013) (discussing that the rise of all-cash purchases, among other things, has prevented many potential homeowners from purchasing homes).

given above and in the preamble to the proposed rule, the Bureau believes this change is necessary and proper to effectuate HMDA's purposes, because this information will help determine whether financial institutions are serving the housing needs of their communities and will assist in decisions regarding the distribution of public sector investments.

4(a)(7)

Section 304(a) and (b) of HMDA requires the disclosure of the dollar amount of covered loans and applications.[266] Section 1003.4(a)(7) of Regulation C requires financial institutions to report the amount of the loan or the amount applied for. Paragraph I.A.7 in appendix A instructs financial institutions to report loan amount to the nearest thousand, among other things. The Bureau proposed § 1003.4(a)(7), which provided that financial institutions shall report the amount of the covered loan or the amount applied for and clarified how to determine and report loan amount with respect to various types of transactions. In addition, the Bureau proposed to delete the requirement to round the loan amount to the nearest thousand, and also proposed several technical, conforming, and clarifying modifications to § 1003.4(a)(7) and its corresponding comments.

Proposed § 1003.4(a)(7)(i) provided that for a closed-end mortgage loan, other than a purchased loan or an assumption, a financial institution shall report the amount to be repaid as disclosed on the legal obligation. The Bureau received a few comments regarding reporting the exact dollar amount, rather than the loan amount rounded to the nearest thousand. Some industry commenters suggested that the Bureau maintain the current rounding requirement, explaining that the change to reporting the exact loan amount in dollars will have limited value and will present an increased opportunity for clerical errors. Other industry commenters recommended that loan amount be reported in ranges rather than an exact loan amount in order to eliminate potential reporting errors and to better protect the privacy of applicants.

On the other hand, a few commenters supported the proposal to report the exact loan amount, agreeing with the Bureau's proposed rationale that this would allow for a more precise calculation of loan-to-value ratio. One industry commenter indicated that reporting loan amount in dollars would also eliminate the potential for errors associated with incorrect rounding. Another industry commenter stated that while rounding has been the standard for reporting loan amount, it has been known to cause problems with data integrity.

The Bureau has considered this feedback and determined that requiring reporting of the exact dollar amount is the more appropriate approach. Reporting of the exact dollar amount will facilitate HMDA compliance because such information is evident on the face of the loan documents and financial institutions will no longer need to make an additional calculation required for rounding. In addition, when coupled with § 1003.4(a)(28), which requires a financial institution to report the value of the property relied on in making the credit decision, a requirement to report the exact dollar amount under § 1003.4(a)(7) will allow for the calculation of loan-to-value ratio, an important underwriting variable. A rounded loan amount would render these calculations less precise, undermining their utility for data analysis.

Proposed § 1003.4(a)(7)(i) further provides that, for a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the financial institution shall report the unpaid principal balance at the time of purchase or assumption. An industry commenter indicated that reporting the unpaid principal balance at the time of purchase for a purchased closed-end mortgage loan would present operational difficulties since payments may sometimes be in process and reconciliation may be required and such reconciliation would be complicated with quarterly reporting. The Bureau does not believe that requiring a financial institution to report the unpaid principal balance of a purchased closed-end mortgage loan at the time of purchase would result in significant difficulties. Moreover, the Bureau simply moved this existing reporting requirement into the text of proposed § 1003.4(a)(7)(i), which prior to the proposal, was found in an instruction and comment. With respect to quarterly reporting, those requirements are described further below in the section-by-section analysis of § 1003.5(a)(1). The Bureau received no other feedback regarding this proposed requirement. Consequently, the Bureau is adopting § 1003.4(a)(7)(i) generally as proposed, with technical and clarifying modifications. In addition, the Bureau is adopting new comment 4(a)(7)–5, which clarifies the loan amount that a financial institution reports for a closed-end mortgage loan as set forth in § 1003.4(a)(7)(i).

Proposed § 1003.4(a)(7)(ii) provides that for an open-end line of credit, including a purchased open-end line of credit or an assumption of an open-end line of credit, a financial institution shall report the amount of credit available to the borrower under the terms of the plan. With respect to open-end lines of credit, the Bureau proposed to collect the full line, rather than only the portion intended for home purchase or improvement, as is currently required. One commenter supported this modification, indicating that it would reduce burdens on financial institutions associated with determining the purposes of open-end lines of credit. Another industry commenter asked the Bureau to expressly clarify that the requirement to report loan amount for a home-equity line of credit is the amount of the line of credit, regardless of any amounts drawn. No clarification is necessary because the commentary provides that the loan amount that must be reported for an open-end line of credit is the entire amount of credit available to the borrower under the terms of the plan. The Bureau is adopting § 1003.4(a)(7)(ii) generally as proposed, with one modification to clarify that reverse mortgage open-end lines of credit are subject to § 1003.4(a)(7)(iii), discussed below. The Bureau is also adopting new comment 4(a)(7)–6, which clarifies that for a purchased open-end line of credit and an assumption of an open-end line of credit, a financial institution reports the entire amount of credit available to the borrower under the terms of the plan.

Regulation C is currently silent as to how loan amount should be determined for a reverse mortgage. Proposed § 1003.4(a)(7)(iii) provides that, for a reverse mortgage, the amount of the covered loan is the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z–20) and implementing regulations and mortgagee letters prescribed by HUD. The Bureau specifically solicited feedback on how to determine loan amount for non-federally insured reverse mortgages but received no comments. One industry commenter requested that the Bureau clarify upon which basis financial institutions should report non-federally insured reverse mortgages. The Bureau believes that industry is familiar with HUD's Home Equity Conversion Mortgage Insurance Program and its implementing regulations and mortgagee letters. Applying this well-known calculation to both federally insured and non-federally insured

[266] 12 U.S.C. 2803(a), (b).

reverse mortgages will produce more consistent and reliable data on reverse mortgages. Consequently, the Bureau is adopting § 1003.4(a)(7)(iii) generally as proposed, but with technical modifications for clarity. In addition, the Bureau is adopting new comment 4(a)(7)–9, which clarifies that a financial institution reports the initial principal limit of a non-federally insured reverse mortgage as set forth in § 1003.4(a)(7)(iii).

The Bureau also proposed comments 4(a)(7)–2, –5, and –6. The Bureau received no specific feedback regarding these comments. Accordingly, the Bureau is adopting these comments generally as proposed, with several technical amendments for clarity and renumbered as 4(a)(7)–3, –7, and –8. The Bureau is adopting proposed comment 4(a)(7)–3 generally as proposed and renumbered as 4(a)(7)–4, but clarifies that for a multiple-purpose loan, a financial institution reports the entire amount of the covered loan, even if only a part of the proceeds is intended for home purchase, home improvement, or refinancing. In addition, the Bureau is adopting new comment 4(a)(7)–2, which clarifies the loan amount that a financial institution reports for an application or preapproval request approved but not accepted under § 1003.4(a)(7).

4(a)(8)

4(a)(8)(i)

Current § 1003.4(a)(8) requires reporting of the action taken on the covered loan or application and the date of action taken. The Bureau proposed to revise the commentary under § 1003.4(a)(8) with respect to rescinded loans, conditional approvals, and applications received by third parties. The Bureau proposed to require that rescinded loans be reported as loans approved but not accepted. In addition, the Bureau proposed guidance on reporting action taken for loans involving conditional approvals and on reporting action taken for applications received by third parties. Comments regarding reporting for applications involving multiple parties are discussed in the section-by-section analysis of § 1003.4(a). For the reasons discussed below, the Bureau is adopting § 1003.4(a)(8) with modifications by providing separate paragraphs for the requirements to report action taken and date of action taken and to incorporate material from current appendix A into § 1003.4(a)(8)(i) and the associated commentary.

The Bureau did not propose changes to § 1003.4(a)(8). To clarify and streamline the regulation, and to provide separate paragraph citations for the action taken reporting requirement and the action taken date reporting requirement, the Bureau is incorporating material from current appendix A into new § 1003.4(a)(8)(i) and new § 1003.4(a)(8)(ii). The Bureau is also adopting several comments which incorporate material previously contained in appendix A into the commentary in order to facilitate compliance. These comments 4(a)(8)(i)–1 through –8 primarily incorporate existing appendix A material, but contain some modifications to align with other changes and new comments discussed below. Because the material was previously contained in appendix A, no substantive change is made.

Few commenters addressed the proposal regarding rescinded loans. One commenter supported the proposal because it provided a consistent reporting rule. Another commenter stated that the proposal would provide consistency, but argued that the number of rescinded loans is so small that the change would not be worth the regulatory compliance cost. The Bureau believes that approved but not accepted most accurately reflects the outcome of a rescinded transaction, and that a consistent reporting rule for rescinded loans is appropriate and justifies any compliance burden. Therefore, it is finalizing comment 4(a)(8)–2 generally as proposed, but with minor technical revisions, renumbered as comment 4(a)(8)(i)–10.

Some commenters addressed the proposal to clarify conditional approvals in comment 4(a)(8)–5. The proposal amended the commentary to clarify the types of conditions that are considered credit conditions and those that are customary commitment or closing conditions, and to clarify which action taken categories should be reported in certain circumstances involving conditional approvals. One industry commenter stated that the revised commentary was helpful. A few commenters stated that the conditional approval rules were generally confusing and did not reflect a financial institution's true credit decision in all circumstances. The Bureau believes that the general framework established by the conditional approvals commentary serves HMDA's purposes and provides a reasonable way for reflecting financial institutions' actions on covered loans and applications. While some financial institutions may view any type of approval, even one with many outstanding conditions, as an approved loan and wish to report it as such under Regulation C, the Bureau believes this would be an inappropriate result for applications that ultimately did not result in originations and were conditioned on underwriting or creditworthiness conditions. The Bureau is finalizing comment 4(a)(8)–5 as proposed, renumbered as comment 4(a)(8)(i)–13.

One commenter argued that financial institutions should not report purchased loans under Regulation C and cited legislative history the commenter believed demonstrated that Congress intended to exclude loans purchased. HMDA section 304(a)(1)(B) has included a requirement to compile and make available information about loans ''purchased by that institution'' since HMDA was enacted in 1975.[267] The legislative history referred to by the commenter does not address whether purchased loans should be reported, but rather, whether secondary market entities that only purchase loans but do not also originate loans should be required to report under HMDA; Congress ultimately enacted a requirement for financial institutions to report the class of purchaser of loans.[268] The Bureau believes that HMDA section 304(a)(1)(B) clearly authorizes reporting of loans purchased by financial institutions covered by HMDA. The Bureau is finalizing comment 4(a)(8)–3 related to purchased loan as proposed, renumbered as comment 4(a)(8)(i)–11.

The Bureau is finalizing comment 4(a)(8)–1 with modifications for clarity, renumbered as comment 4(a)(8)(i)–9. The Bureau is finalizing comment 4(a)(8)–4 as proposed, renumbered as comment 4(a)(8)(i)–12. The Bureau is also adopting new comments 4(a)(8)(i)–1 through 4(a)(8)(i)–8 which incorporate material in existing appendix A with some modifications for clarity. The Bureau is also adding new comment 4(a)(8)(i)–15 to provide guidance on reporting action taken when a financial institution has provided a notice of incompleteness followed by an adverse action notice on the basis of incompleteness under Regulation B.[269] The comment provides that an institution may report the action taken as either file closed for incompleteness or application denied in such a circumstance.

4(a)(8)(ii)

The Bureau proposed only technical changes and modifications to the

[267] Home Mortgage Disclosure Act of 1975, Public Law 94–200, section 304(a)(1)(B). 12 U.S.C. 2803(a).

[268] H. Rept. 101–222 (1989), at 460. 12 U.S.C. 2803(h)(1)(C).

[269] 12 CFR 1002.9(c)(1)(i) and (ii).

current Regulation C requirement to report the date of action taken by a financial institution on a covered loan or application. The Bureau did not receive many comments related to the requirement to report action taken date. Comments related generally to the definition of application or reporting of applications are discussed in the section-by-section analysis of § 1003.2(b). The Bureau is finalizing the requirement to report the date of action taken as new § 1003.4(a)(8)(ii) to provide a separate paragraph for the requirement. The Bureau is adopting comments 4(a)(8)–7, –8, and –9 as proposed, renumbered as comments 4(a)(8)(ii)–4, –5, and –6. The Bureau is also adopting new comments 4(a)(8)(ii)–1, –2, and –3, which incorporate existing requirements in appendix A related to reporting of action taken date.

4(a)(9)

The Bureau proposed to require financial institutions to report the address of the property securing the covered loan, discussed below in the section-by-section analysis of § 1003.4(a)(9)(i), and to continue to require financial institutions to report the State, MSA or MD, county, and census tract of most reported covered loans, discussed below in the section-by-section analysis of § 1003.4(a)(9)(ii). The Bureau is adopting proposed § 1003.4(a)(9) with the modifications discussed below.

Covered Loans Related to Multiple Properties

The Bureau proposed to revise existing comments 4(a)(9)–1 and –2 to provide a single framework clarifying how to report a covered loan related to multiple properties. Proposed comment 4(a)(9)–1 discussed reporting when a covered loan relates to more than one property but only one property secures or would secure the loan. Proposed comment 4(a)(9)–2 provided that if more than one property secures or would secure the covered loan, a financial institution may report one of the properties using one entry on its loan/application register or the financial institution may report all of the properties using multiple entries on its loan/application register. Proposed comment 4(a)(9)–3 discussed reporting multifamily properties with more than one address.

A few commenters provided feedback on proposed comment 4(a)(9)–2. One consumer advocate suggested that the Bureau should require financial institutions to report information concerning all of the properties securing the loan. A few industry commenters took the opposite position and urged the Bureau to require financial institutions to report information about only one of the properties.

After considering the comments, the Bureau concludes that optional reporting is not advisable because HMDA data would provide inconsistent information about these types of transactions. At the same time, requiring financial institutions to report information about all of the properties securing the loan is also problematic because it would present additional burden for financial institutions. In addition, defining what constitutes multiple properties may present challenges for some multifamily complexes, which may sit on one parcel but have multiple addresses. For those reasons, the final rule requires financial institutions to report information about only one of the properties securing the loan.

Accordingly, the Bureau is finalizing proposed comments 4(a)(9)–1 through –3 with modifications to require reporting of one property when a covered loan is secured by more than one property. The Bureau also proposed technical modifications to existing comments 4(a)(9)–4 and –5. The Bureau received no comments on comments 4(a)(9)–4 and –5 and is finalizing them as proposed.

4(a)(9)(i)

The Dodd-Frank Act amended HMDA to authorize the Bureau to collect ''as [it] may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral.'' [270] The Bureau proposed to implement this authorization with proposed § 1003.4(a)(9)(i), which provided that financial institutions were required to report the postal address of the physical location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. The proposal indicated that the Bureau anticipated that postal address information would not be publicly released if proposed § 1003.4(a)(9)(i) were finalized. The Bureau solicited feedback on whether collecting postal address was an effective way to implement the Dodd-Frank amendment.

For the reasons discussed below, the Bureau is adopting § 1003.4(a)(9)(i) as proposed with the technical modifications discussed below. The Bureau is also adopting new comments 4(a)(9)(i)–1 through –3 to clarify the reporting requirements.

The Bureau received several comments on proposed § 1003.4(a)(9)(i). Several consumer advocate commenters supported reporting postal address.[271] These commenters highlighted that postal addresses would improve the ability to detect localized discrimination, noting that discrimination can occur in areas smaller than census tracts or other geographic boundaries. In addition, some explained that relying on census tracts for geographic analysis creates challenges for longitudinal analysis of the data because census tracts change over time. They also noted that collecting address in HMDA would enable tracking of multiple liens on the same property and thereby identifying risks for borrowers who may be over-leveraged.

Several industry commenters raised objections to reporting postal address. Some of these commenters suggested that postal address would not provide any valuable information because census tract information provides sufficient information to conduct fair lending or other statistical analysis of the property location. Other commenters asserted that reporting postal address would not support HMDA's purposes. Some industry commenters also expressed concerns about the burden of reporting postal address.

In addition, many industry commenters raised concerns about the privacy implications of including postal address in the HMDA data set. Commenters expressed concerns both about collecting the information and about disclosing the information. Commenters explained that address can be used to link the financially sensitive information included in the HMDA data with an individual borrower. Commenters suggested that the Bureau's data security systems would not adequately protect the information from accidental disclosure during the transmission of the information to the Bureau and while the information is stored on the Bureau's systems. Some industry commenters noted that information on census tract was preferable to postal address because it protects privacy. Most commenters urged the Bureau not to release the reported postal address information if

[270] HMDA section 304(b)(6)(H) authorizes the Bureau to include in the HMDA data collection ''the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral.'' 12 U.S.C. 2803(b)(6)(H).

[271] During the Board's hearings, a consumer advocate urged the Board to add information that uniquely identifies the property related to the loan to the HMDA data. *See, e.g.,* Washington Hearing, *supra* note 39 (remarks of Lisa Rice, Vice President, National Fair Housing Alliance).

collected. A consumer advocate also urged the Bureau to consider protections for specific populations, such as victims of domestic violence, when considering whether to release address information. A few consumer advocate commenters, on the other hand, urged the Bureau to release address, or point-specific information, to trusted researchers.

The Bureau is finalizing the proposal to collect the postal address, changed to property address for the reasons discussed below, of the property securing or proposed to secure a covered loan. Collecting property address will enrich the HMDA data and will support achieving HMDA's purposes. With these data, Federal officials will be able to track multiple liens on the same property. In addition, property address will help officials better understand access to credit and risks to borrowers in particular communities and better target programs to reach vulnerable borrowers and communities. Using these data, Federal officials may be able to detect patterns of geographic discrimination not evident from census tract data, which will assist in identifying violations of fair lending laws. In addition, as census tracts change over time, collecting property address will facilitate better longitudinal analysis of geographic lending trends.

However, the Bureau recognizes that collecting property address presents some challenges. As noted in the proposal, including property address in the HMDA data raises privacy concerns because property address can easily be used to identify a borrower. The Bureau is sensitive to the privacy implications of including property address in the HMDA data and has considered these implications carefully. Although the Bureau's privacy analysis is ongoing, as discussed in part II.B above, the Bureau anticipates that property address will not be included in the publicly released HMDA data. Due to the significant benefits of collecting this information, the Bureau believes it is appropriate to collect property address in spite of the privacy concerns and other concerns raised by commenters about collecting this information.

Parcel Number

Many commenters discussed whether postal address was an appropriate way to implement the Dodd-Frank authorization to collect a parcel number. Most of these commenters, including both industry and consumer advocate commenters, expressed support for using postal address to implement the authorization to collect a parcel number. Commenters noted that collecting postal address, while imperfect, is the best available option, because it is less burdensome to report than reporting a local parcel number and uniquely identifies most properties. A few commenters specifically stated that other alternatives discussed in the proposal, such as geospatial coordinates or local parcel number, present greater reporting burdens than postal address. Commenters also noted the current absence of a national universal parcel numbering system. One commenter stated that local parcel numbers are not used by lenders and are used solely by professionals that manage property records. Another commenter described the burden associated with reporting a local parcel number, stating that address, unlike a local parcel number, is stored in the same system as the other HMDA data. Other commenters stated that postal address would provide more complete information than a local parcel number for loans related to manufactured housing because manufactured homes located in mobile home parks may be placed on the same parcel but have unique property addresses.

Some consumer advocate commenters stated that postal address was currently an appropriate way to collect a parcel number, but asked the Bureau to consider replacing postal address with a universal parcel identifier if one is developed in the future. In addition, one commenter urged the collection of local parcel numbers because of their value for analysis at the local level. A few commenters that represented geospatial vendors recommended collecting both postal address and local parcel information. They explained that this would allow the Bureau, using both the reported address and local parcel information, to establish a national parcel database with mapping capabilities. Some of these commenters noted that collecting this information would also facilitate the creation of a national parcel numbering system.

The Bureau concludes that collecting property address is an appropriate way to implement the Dodd-Frank authorization to collect a parcel number. As noted by commenters, address is the least burdensome way to collect information that will uniquely identify a property. Financial institutions currently collect property address during the mortgage origination and application process if the address is available, and store that information with the other application and loan data that is reported in HDMA. In addition, most properties, including manufactured homes, have property addresses. In a small number of cases, a property address may not be available at the time of origination for some properties. Nonetheless, property address is an efficient and effective way to implement the authorization to collect a parcel number.

Currently, no universal standard exists for identifying a property so that it can be linked to related mortgage data. Parcel data are collected and maintained by individual local governments with limited State or Federal involvement. Local jurisdictions do not use a standard way to identify properties. In addition, local parcel data are not easily linked to the location of the property, which, as discussed above, substantially amplifies the usefulness of a parcel identifier. Local parcel information would provide some value for local analysis, but property address also provides valuable information at the local level. Therefore, compared with collecting property address, collecting a local parcel number would substantially increase the burden associated with reporting a parcel identifier and would substantially decrease the utility of the data.

The Bureau is not at this time pursuing commenters' suggestions for using Regulation C to develop a national parcel database. The Bureau may consider in the future whether and how it could work with other regulators and public officials to explore a national parcel identification system or other similar systems. The final rule does not require financial institutions to collect a local parcel number in addition to property address. The Bureau concludes that collecting property address strikes the appropriate balance between improving the data's utility and minimizing undue burden on data reporters.

For the reasons discussed above, the Bureau is implementing the Dodd-Frank authorization to collect the ''parcel number that corresponds to the real property pledged or proposed to be pledged as collateral'' by requiring financial institutions to report the property address of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.[272] As discussed above, there is no universal parcel number system; therefore, the Bureau believes it is reasonable to interpret the Dodd-Frank Act amendment to refer to information that uniquely identifies a dwelling pledged or proposed to be

[272] HMDA section 304(b)(6)(H) authorizes the Bureau to include in the HMDA data collection ''the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral.'' 12 U.S.C. 2803(b)(6)(H).

pledged as collateral. The Bureau is also adopting § 1003.4(a)(9)(i) pursuant to the Bureau's HMDA section 305(a) authority to provide for adjustments because, for the reasons given above, the Bureau believes the provision is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith.

Reporting Issues

Some industry commenters discussed situations when reporting a postal address is not possible or should not be required. A few of these commenters asked what to report if the property does not have an address. Others urged the Bureau not to require reporting of postal address information for purchases or for applications withdrawn or denied. The Bureau recognizes that in some cases address information will not be known. Consequently, address information will not be reported for all HMDA entries, as indicated in new comment 4(a)(9)–3. As discussed above, however, because property address greatly enriches the utility of HMDA data, financial institutions must report property address if the information is available. Therefore, the Bureau is not adopting commenters' suggestions to exclude certain types of entries from the requirement to report property address.

Some commenters suggested that Regulation C require reporting of the physical location of the property, instead of the mailing address, which may be different from the physical location of the property in some cases. Proposed § 1003.4(a)(9) and proposed instruction 4(a)(9)–1 directed financial institutions to report the postal address that corresponds to the physical location of the property, not the mailing address. To eliminate the confusion about whether to report the mailing address or the physical location of the property, the Bureau is modifying § 1003.4(a)(9)(i) to replace the term postal address, which may have been misunderstood to mean mailing address, with the term property address, which is understood to refer to the physical location of the property. In addition, the Bureau is adopting new comment 4(a)(9)(i)–1 to clarify that the financial institution reports the property address of the physical location of the property.

One commenter urged revising the requirement to include primary street address points, sub-address points, and geographic coordinates. The commenter also urged the Bureau to partner with States as they build addresses to meet the requirements of Next Generation 9–1–1 systems. The Bureau recognizes that in some cases, addresses may not convey full information about a property's location. These enhanced addressing standards would enrich the quality of the geographic information reported in HMDA data in those cases where address does not precisely identify a property's location, such as for dwellings located on rural routes. However, importing these standards for HMDA reporting seems likely to result in new burden for financial institutions that currently collect address during the application process but may not be collecting the information required by these standards. At the same time, any benefit from using these standards in HMDA would be limited only to a subset of HMDA reportable transactions. The Bureau's judgment is that reporting property address is less burdensome for institutions than enhanced standards, and will provide benefits sufficient to justify any burden that might be imposed on financial institutions.

Some industry commenters noted the challenges of reporting postal address in a standard format. To resolve those challenges, one commenter suggested requiring reporting the information in the same format as the closing disclosure. Another commenter noted that reporting postal address would have risks of input errors and suggested that the Bureau allow good faith errors for the address information. Other commenters sought clarification about how to report and whether abbreviations were allowed.

In response to these comments, the final rule clarifies institutions' reporting obligations to help minimize the risk of inadvertent reporting errors. Accordingly, new comment 4(a)(9)(i)–2 provides guidance on how to report the property address. In addition, § 1003.6, discussed below, addresses bona fide errors.

Final Rule

Having considered the comments received and for the reasons discussed above, the Bureau is finalizing § 1003.4(a)(9)(i) as proposed with the modifications discussed above. In addition, for the reasons discussed above, the Bureau is adopting new comments 4(a)(9)(i)–1 through –3 to provide illustrative examples and to incorporate information included in proposed instruction 4(a)(9).

4(a)(9)(ii)

Under HMDA and current Regulation C, a financial institution is required to report the location of the property to which the covered loan or application relates by MSA or MD, State, county, and census tract if the loan is related to a property located in an MSA or MD in which the financial institution has a home or branch office and a county with a population of more than 30,000.[273] In addition, § 1003.4(e) requires banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the CRA to collect the location of property located outside MSAs and MDs in which the institution has a home or branch office or outside of any MSA. The Bureau proposed to renumber existing § 1003.4(a)(9) as § 1003.4(a)(9)(ii) and to make certain nonsubstantive technical modifications for clarification. The Bureau did not propose any changes to § 1003.4(e).

The Bureau explained in the proposal that it was exploring ways to reduce the burden associated with reporting the State, county, MSA, and census tract of a property, such as operational changes that may enable the Bureau to perform geocoding (*i.e.,* identifying the State, county, MSA, and census tract of a property) for financial institutions. The Bureau suggested that it might create a system where a financial institution reports only the address and the Bureau provides the financial institution with the census tract, county, MSA or MD, and State. The Bureau solicited feedback on the potential operational improvements.

For the reasons discussed below, the Bureau is adopting § 1003.4(a)(9)(ii), which requires financial institutions to report the State, county, and census tract of the property securing or proposed to secure a covered loan if the property is located in an MSA in which the institution has a home or branch office or if § 1003.4(e) applies. The final rule eliminates the requirement to report the MSA or MD of the property securing or proposed to secure a covered loan. The Bureau is also adopting new comments 4(a)(9)(ii)(B)–1 and 4(a)(9)(ii)(C)–1 to provide guidance on how to report county and census tract information, respectively.

Many commenters provided feedback on whether the Bureau should assume geocoding responsibilities for reporters. Some commenters, including a few industry commenters and many consumer advocate commenters, expressed support for the Bureau

[273] *See* § 1003.4(a)(9); HMDA section 304(a)(2). Part I.C.3 of appendix A directs financial institutions to enter ''not applicable'' for census tract if the property is located in a county with a population of 30,000 or less. A for-profit mortgage-lending institution is deemed to have a branch office in an MSA or MD if in the preceding calendar year it received applications for, originated, or purchased five or more home purchase loans, home improvement loans, or refinancings related to property located in that MSA or MD, respectively. *See* § 1003.2 (definition of branch office).

assuming geocoding responsibilities. Many of those commenters noted that such a change would improve the accuracy of geocoding information. Most industry commenters, however, raised concerns with the Bureau assuming geocoding responsibilities for reporters. Some asserted that such an operational change would not reduce their burden because financial institutions already have geocoding systems in place and would continue to use those systems even if the Bureau assumed geocoding responsibilities. Some of these commenters explained that financial institutions would not want to wait until they submit their HMDA data to obtain the geocoding information because they need on demand geocoding for business purposes such as evaluating their lending penetration.

In addition, some commenters raised some practical issues with the Bureau assuming geocoding, such as developing a system for the Bureau and financial institutions to communicate back-and-forth about geocoding results. Commenters also stated that geocoding would be more accurate if performed by the financial institution because the institution is probably more familiar with the particular geographic area and likely could identify errors in geocoding more readily than the Bureau could. In addition, industry commenters raised concerns about whether financial institutions would be held responsible for the accuracy of the Bureau's geocoding and about whether the Bureau would assume responsibility for identifying the census tracts of properties that return an error in the Bureau's geocoding database. A few industry commenters asked the Bureau to allow them to report their geocoded information even if the Bureau decides to take the geocoding on itself. A few other industry commenters suggested that instead of geocoding for financial institutions, that the Bureau develop a free geocoding database or tool for financial institutions.

The Bureau has concluded that it should not geocode for financial institutions and instead should focus on the best way to achieve accuracy in the property location information reported in HMDA. Property location data is more likely to be accurate if the financial institution reporting the covered loan or application also geocodes the property. In addition, based on comments from financial institutions, it appears that assuming geocoding responsibilities for financial institutions might not achieve the burden reduction that the Bureau hoped to achieve when it issued the proposal. Therefore, the Bureau does not plan to pursue assuming geocoding responsibilities in the manner discussed in the proposal. Instead, the Bureau is exploring other ways that it can assist reporters with geocoding, such as developing an improved geocoding tool for financial institutions.

Consumer advocate commenters also discussed the value of the currently reported property location information and urged the Bureau to continue to require reporting of information by census tract and to continue to make that information available in the publicly disclosed data. The Bureau is generally retaining reporting of the currently required property location information because it provides valuable information.

The Bureau believes that it can reduce the burden of reporting by eliminating the requirement to report the MSA or MD in which the property is located. If a financial institution reports the county, the regulators can identify the MSA or MD because MSAs and MDs are defined at the county level. The MSA or MD can be inserted into the publicly available data so that the data's utility is preserved.

Finally, it appears that financial institutions do not report MSA or MD information when they have incomplete property location information. In the past five years, no financial institutions have reported the MSA or MD of a property without other property location information.[274] Therefore, retaining this field only for cases when the financial institution does not know the county in which the property securing, or proposed to secure, the covered loan is located would also not provide valuable information. Therefore, the final rule eliminates the burden of reporting this information to facilitate compliance.

For the reasons discussed above, the Bureau is finalizing proposed § 1003.4(a)(9)(ii), with modifications to eliminate the requirement included in proposed § 1003.4(a)(9)(ii)(C) as discussed above.

[274] It is not clear why a financial institution does not report property location information for a particular entry. It could be because the information is not required, because, for example, the property is not located in an MSA or MD in which the institution has a home or branch office. *See* § 1003.4(a)(9). In the past five years, some financial institutions reported the State in which the property is located without other property location information, which may suggest that the financial information had incomplete information about the location of the property.

4(a)(10)

4(a)(10)(i)

HMDA section 304(b)(4) requires the reporting of racial characteristics and gender for borrowers and applicants.[275] Section 1003.4(a)(10) of Regulation C requires a financial institution to collect the ethnicity, race, and sex of the applicant or borrower for applications and loan originations for each calendar year. The Bureau proposed to renumber this requirement as § 1003.4(a)(10)(i), and also proposed several technical and clarifying amendments to the instructions in appendix A and the associated commentary.

The Bureau's proposal solicited feedback regarding the challenges faced by both applicants and financial institutions by the data collection instructions prescribed in appendix B and specifically solicited comment on ways to improve the data collection of the ethnicity, race, and sex of applicants and borrowers. The Bureau also conducted a voluntary, small-scale survey to solicit suggestions from financial institutions on ways to improve the process of collecting the ethnicity, race, and sex of applicants that may potentially relieve burden and help increase the response rates by applicants, in particular, for applications received by mail, internet, or telephone. The Bureau selected nine financial institutions for participation in the survey which, according to recent HMDA data, generally exhibited relatively high incidences of applicants providing ethnicity, race, and sex in applications made by mail, internet, or telephone. The Bureau was interested to learn what factors may have contributed to these higher response rates and also to identify potential improvements to appendix B. Five financial institutions chose to participate in the survey and the Bureau considered their responses as part of the HMDA rulemaking.

In response to the proposal's solicitation for feedback, a few industry commenters recommended that the Bureau remove the proposed requirement, which currently exists under the rule, that financial institutions collect an applicant's ethnicity, race, and sex on the basis of visual observation and surname when an application is taken in person and the applicant does not provide the information. In general, these industry commenters did not support this collection requirement for the following reasons. First, commenters expressed the belief that loan originators should

[275] 12 U.S.C. 2803(b)(4); *see also* 79 FR 51731, 51775 (Aug. 29, 2014), n. 340.

not have to guess, on the basis of visual observation or surname, as to what is an applicant's ethnicity, race, and sex. Second, commenters expressed the belief that such guessing results in inaccurate and unreliable data. Lastly, commenters expressed the belief that an applicant's decision not to provide his or her demographic information should be respected and that a loan originator should not override that decision by being required to collect the information on the basis of visual observation or surname.

On the other hand, several consumer advocate commenters provided feedback emphasizing that data on an applicant's ethnicity, race, and sex is vital to HMDA's utility. A few of these commenters also emphasized the need for HMDA data to reflect whether such demographic information was self-reported by applicants or the result of a loan originator collecting the information on the basis of visual observation or surname. For example, one commenter stated that information on ethnicity and race is crucial for discovering potential patterns of discrimination and recommended that the loan/application register include a flag indicating whether ethnicity and race information was provided by the applicant, allowing independent researchers and community advocates to undertake important fair lending analyses. Another commenter stated that in order for the Bureau to better understand whether the visual observation or surname requirement is producing useful information, it urged the Bureau to require financial institutions to report whether the borrowers have furnished the race, ethnicity, and sex data. Lastly, another commenter stated that information regarding how often borrowers refuse to voluntarily report demographic data or how often lenders report such information on the basis of visual observation or surname is not easily found and therefore, at the very least, the Bureau should flag applicant or borrower versus financial institution reporting of demographic information.

The Bureau has considered this feedback and determined that the appropriate approach to further HMDA's purposes is to continue to require that financial institutions collect the ethnicity, race, and sex of applicants on the basis of visual observation and surname when an application is taken in person and the applicant does not provide the information. The Bureau agrees with both industry and consumer advocate commenters that recognized the importance of data on an applicant's or borrower's ethnicity, race, and sex to the purposes of HMDA. The Bureau has determined that removing the visual observation or surname requirement from the final rule would diminish the utility of the HMDA data to further HMDA's purposes. The Bureau has also determined that requiring financial institutions to report whether the applicant's ethnicity, race, and sex was collected on the basis of visual observation or surname improves the utility of HMDA data. Accordingly, the Bureau is maintaining the current requirement in appendix B that when an applicant does not provide the requested information for an application taken in person, a financial institution is required to collect the demographic information on the basis of visual observation or surname. In addition, the Bureau is adopting a new requirement in § 1003.4(a)(10)(i) of the final rule that requires financial institutions to report whether the applicant's ethnicity, race, or sex was collected on the basis of visual observation or surname. The Bureau is adopting new instructions and modifications to the sample data collection form in appendix B to capture this new reporting requirement.

In response to the proposal's solicitation for feedback on ways to improve the data collection of an applicant's ethnicity, race, and sex, and in response to the Bureau's survey which sought, among other things, suggestions on ways to help increase the response rates by applicants, the Bureau received feedback urging the Bureau to disaggregate the ethnicity category as well as two race categories—the Asian category and the Native Hawaiian and Other Pacific Islander category. Before discussing this feedback, it is important to first describe the data standards on ethnicity and race issued by the Office of Management and Budget (OMB).

The OMB has issued the standards for the classification of Federal data on ethnicity and race.[276] OMB's current government-wide standards provide ''a minimum standard for maintaining, collecting, and presenting data on race and ethnicity for all Federal reporting purposes. . . . The standards have been developed to provide a common language for uniformity and comparability in the collection and use of data on race and ethnicity by Federal agencies.'' [277] The OMB standards provide the following minimum categories for data on ethnicity and race: Two minimum ethnicity categories (Hispanic or Latino; Not Hispanic or Latino) and five minimum race categories (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White). The categories for ethnicity and race in existing Regulation C conform to the OMB standards.

In addition to the minimum data categories for ethnicity and race, the OMB Federal Data Standards on Race and Ethnicity provide additional key principles. First, self-identification is the preferred means of obtaining information about an individual's ethnicity and race, except in instances where observer identification is more practical.[278] Second, the collection of greater detail is encouraged as long as any collection that uses more detail is organized in such a way that the additional detail can be aggregated into the minimum categories for data on ethnicity and race. More detailed reporting, which can be aggregated to the minimum categories, may be used at the agencies' discretion. Lastly, Federal agencies must produce as much detailed information on ethnicity and race as possible; however, Federal agencies shall not present data on detailed categories if doing so would compromise data quality or confidentiality standards.[279]

In addition to the OMB standards, it is also important to describe the data standards used in the 2000 and 2010 Decennial Census. The U.S. Census Bureau (Census Bureau) collects Hispanic origin and race information following the OMB standards and guidance discussed above.[280] Responses to the Hispanic origin question and race question in the 2000 and 2010 Decennial Census were based on self-identification.[281]

The OMB definition of Hispanic or Latino origin used in the 2010 Census refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.[282] Hispanic or Latino origin can be viewed as the heritage, nationality group, lineage, or country of birth of the person or the person's parents or ancestors before their arrival in the United States.[283] The

[276] Office of Mgmt. and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 FR 58782–90 (Oct. 30, 1997) [hereinafter OMB Federal Data Standards on Race and Ethnicity].

[277] *See id.*

[278] *See id.*

[279] *See id.*

[280] U.S. Census Bureau, C2010BR–02, *Overview of Race and Hispanic Origin: 2010,* at 2 (2011) [hereinafter Census Bureau Overview], *available at http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.*

[281] *See id.*

[282] *See* OMB Federal Data Standards on Race and Ethnicity; Census Bureau Overview at 2.

[283] *See* Census Bureau Overview at 2.

2010 Census disaggregated ethnicity into four categories (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) and included one area where respondents could write-in a specific Hispanic or Latino origin group.[284] As required by the OMB, the response categories and the write-in answers for the Census Bureau's ethnicity question can be combined to create the two minimum OMB categories for ethnicity, discussed above.

The OMB definitions of the race categories used in the 2010 Census, plus the Census Bureau's definition of Some Other Race, are discussed in footnote 285 below.[285] For respondents who are unable to identify with any of the five minimum OMB race categories, OMB approved the Census Bureau's inclusion of a sixth race category—Some Other Race—on the 2000 and 2010 Census questionnaires. The 2010 Census disaggregated the Asian race into seven categories (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian), the Native Hawaiian and Other Pacific Islander race into four categories (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) and included three areas where respondents could write-in a specific Asian race, a specific Pacific Islander race, and the name of his or her enrolled or principal tribe in the American Indian or Alaska Native category.[286] As required, the response categories and the write-in answers for the Census Bureau's race question can be combined to create the five minimum OMB categories for race, discussed above, plus Some Other Race.

Another Federal agency has already begun to require more detailed data collection on ethnicity and race as is encouraged by the OMB and as has been used by the Census Bureau for 15 years. On October 31, 2011, the U.S. Department of Health and Human Services (HHS) published data standards for ethnicity and race that it now uses in its national population health surveys undertaken pursuant to the Affordable Care Act. These data standards are based on the disaggregation of the OMB standard and the 2000 and 2010 Decennial Census discussed above. Many of the commenters that provided feedback on the Bureau's proposal, discussed below, urged the Bureau to follow the data collection standards being used by the HHS and require financial institutions to collect and report more detailed ethnicity and race information.

In addition, the American Housing Survey, which is a comprehensive national housing survey sponsored by HUD and conducted biennially by the Census Bureau, will similarly provide more detailed country of origin information for the first time ever in 2015.[287] According to HUD's ''Priority Program Goals for the Asian American and Pacific Islander Community,'' one of the agency's five program goals is to improve the data collected on Asian American and Pacific Islander (AAPI) communities and it is working to disaggregate data for all major programs, including homeownership, tenant based rental assistance, and public housing. HUD's goal to disaggregate data extends not only to the AAPI community, but also to the Hispanic or Latino community.[288]

The Bureau received many comments in response to its solicitation regarding the challenges faced by both applicants and financial institutions by the HMDA data collection instructions regarding an applicant's ethnicity, race, and sex, and on ways to improve that data collection. The comment letters of many consumer advocacy groups—reinforced in subsequent communications and outreach—recommended disaggregation of the Asian and Native Hawaiian or Other Pacific Islander categories. A handful of these organizations also recommended disaggregation of data on the ethnicity category. These recommendations generally align with the 2000 and 2010 Decennial Census, the approach that HHS has been using since 2011 in its national population health surveys, and the approach HUD will be taking in all of its major programs.

In general, these commenters urged the Bureau to disaggregate the ethnicity and race categories under HMDA for the following reasons. First, commenters stated that disaggregated data will more accurately reflect the borrowing experiences of various AAPI and Hispanic or Latino communities across the country. For example, some commenters stated that newer immigrants are likely to have different experiences in the mortgage market than earlier immigrants. In addition, since many subpopulation groups include limited-English proficient communities, commenters supported disaggregated data as a vehicle to better understanding of lending to these vulnerable groups and perhaps improved access to homeownership.

Second, commenters expressed the belief that the aggregate OMB categories for ethnicity and race may mask discriminatory practices that are occurring against subpopulation groups that fall within these aggregate categories. For example, one consumer advocate commenter described the efforts made by one of its member organizations to manually disaggregate the HMDA data using borrowers' last name, census tract information in Queens, New York, and public court records to determine that more than 50 percent of defaults were among South Asians in many neighborhoods. In response, the organization assessed the needs of this particular Asian subpopulation group and prioritized building a foreclosure prevention program, which helped stabilize these minority neighborhoods. Overall, many commenters stated that expanding the

[284] *See id.*

[285] ''White'' refers to a person having origins in any of the original peoples of Europe, the Middle East, or North Africa. It includes people who indicated their race(s) as ''White'' or reported entries such as Irish, German, Italian, Lebanese, Arab, Moroccan, or Caucasian.

''Black or African American'' refers to a person having origins in any of the Black racial groups of Africa. It includes people who indicated their race(s) as ''Black, African Am., or Negro'' or reported entries such as African American, Kenyan, Nigerian, or Haitian.

''American Indian or Alaska Native'' refers to a person having origins in any of the original peoples of North or South America (including Central America) and who maintains tribal affiliation or community attachment. The category includes people who indicated their race(s) as ''American Indian or Alaska Native'' or reported their enrolled or principal tribe, such as Navajo, Blackfeet, Inupiat, Yup'ik, or Central American Indian groups or South American Indian groups.

''Asian'' refers to a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. It includes people who indicated their race(s) as ''Asian'' or reported entries such as ''Asian Indian,'' ''Chinese,'' ''Filipino,'' ''Korean,'' ''Japanese,'' ''Vietnamese,'' and ''Other Asian'' or provided other detailed Asian responses.

''Native Hawaiian or Other Pacific Islander'' refers to a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. It includes people who indicated their race(s) as ''Pacific Islander'' or reported entries such as ''Native Hawaiian,'' ''Guamanian or Chamorro,'' ''Samoan,'' and ''Other Pacific Islander'' or provided other detailed Pacific Islander responses.

''Some Other Race'' includes all other responses not included in the White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander race categories described above. Respondents reporting entries such as multiracial, mixed, interracial, or a Hispanic or Latino group (for example, Mexican, Puerto Rican, Cuban, or Spanish) in response to the race question are included in this category. *See* Census Bureau Overview at 2–3.

[286] *See* Census Bureau Overview at 1–2.

[287] *See https://www.whitehouse.gov/the-press-office/2015/05/12/fact-sheet-white-house-summit-asian-americans-and-pacific-islanders.*

[288] *See* U.S. Dep't. of Housing and Urban Dev., *Priority Program Goals for the Asian American and Pacific Islander Community, available at http://www.hud.gov/offices/hsg/mfh/trx/meet/raceethnicdatacollexecorder.pdf.*

aggregate ethnicity and race categories to include specific subpopulations will assist regulators and the public in determining whether discrimination against certain subpopulations is occurring in minority communities.

Lastly, commenters stated that the importance of ethnicity and race data to HMDA's purposes is critical and as such, the Bureau should do what it can to encourage applicants to provide their demographic information. These commenters expressed the belief that the aggregate OMB categories for ethnicity and race are often too broad and do not provide applicants within subpopulation groups with the opportunity of self-identification. One industry participant in the Bureau's survey expressed a similar perspective after speaking to several of its originators indicating that applicants opt to skip the ethnicity and race questions altogether when the options do not accurately describe their ethnic or racial identity.

As discussed above, the OMB encourages the collection of greater detail beyond the two minimum categories for ethnicity and the five minimum categories for race, and as such, agencies may use more detailed reporting at their discretion so long as any collection that uses more detail is organized in such a way that the additional detail can be aggregated into the minimum categories for data on ethnicity and race. The Bureau has considered the feedback it received in response to its solicitation on ways to improve the data collection of an applicant's ethnicity, race, and sex under appendix B and determined, as discussed below, that the appropriate approach to further HMDA's purposes is to build upon the OMB standards by adding the type of granularity for subpopulations that was used in the 2000 and 2010 Decennial Census, with the exception that the Bureau is not adopting the sixth race category used by Census—Some Other Race—which cannot be aggregated to the five minimum OMB categories for race.

First, the Bureau believes that disaggregated data on applicants' ethnicity and race will provide meaningful data, which will further HMDA's purposes—in determining whether financial institutions within a particular market are serving the housing needs of specific communities; in distributing public-sector investments so as to attract private investment to areas or communities where it is needed; and in identifying possible discriminatory lending patterns. Consumer advocates have been urging the Bureau for years to gather disaggregated information, which will enable them to determine whether institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located. Data on subpopulation groups in the residential mortgage market will substantially advance the ability to better understand the market for particular subgroups and monitor access to credit.

The Bureau recognizes that disaggregated data may not be useful in analyzing potential discrimination where financial institutions do not have a sufficient number of applicants or borrowers within particular subgroups to permit reliable assessments of whether unlawful discrimination may have occurred. However, in situations in which the numbers are sufficient to permit such fair lending assessments, disaggregated data on ethnicity and race will help identify potentially discriminatory lending patterns. Improved data will not only assist in identifying potentially discriminatory practices, but will also contribute to a better understanding of the experiences that members within subpopulations may share in the mortgage market.

Second, as a 21st century, data-driven agency, the Bureau believes that its rules should recognize the nation's changing ethnic and racial diversity. By aligning the ethnicity and race categories in HMDA with the questions on Hispanic origin and race used by the Census Bureau during the last 15 years, the Bureau is taking a step forward in updating its data collection requirements. Lastly, as pointed out by commenters, disaggregation will also encourage self-reporting by applicants by offering, as the Census does, categories which promote self-identification.

The Bureau recognizes that financial institutions may have concerns about this change to the collection and reporting of ethnicity and race under HMDA. This change may increase the burden of collection and reporting HMDA data. Disaggregation, as described here, may also result in financial institutions having to expand their data systems, update their application forms and processes, and provide additional training to loan originators to ensure compliance with the new requirements. There may also be questions as to what the Bureau expects of financial institutions with respect to their compliance management systems and challenges they may face in conducting fair lending analyses with the new data on ethnicity and race.

The Bureau has considered these potential concerns, among others, and nonetheless believes that the utility of disaggregated HMDA data on applicants' ethnicity and race justifies the potential burdens and costs. Accordingly, the Bureau is adopting new data standards for the collection and reporting of ethnicity and race by modifying the instructions in appendix B and the sample data collection form. As such, the final rule requires financial institutions to use the following data standards for the collection and reporting of an applicant's ethnicity and race.

Ethnicity:

☐ Hispanic or Latino – *Check one or more*

☐ Mexican

☐ Puerto Rican

☐ Cuban

☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: *Check one or more*

☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian

☐ Asian Indian

☐ Chinese

☐ Filipino

☐ Japanese

☐ Korean

☐ Vietnamese

☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander

☐ Native Hawaiian

☐ Guamanian or Chamorro

☐ Samoan

☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

As discussed above, with regard to the current requirement in appendix B that a financial institution collect an applicant's ethnicity, race, and sex on the basis of visual observation or surname when the applicant does not provide the requested information for an application taken in person, the Bureau has determined that it will maintain this requirement as is. However, the concerns with the visual observation and surname requirement expressed by commenters discussed above, would arguably be magnified due to the difficulties loan originators would potentially encounter in determining an applicant's ethnicity and race with the expanded categories the Bureau is finalizing. Thus, to reduce the potential burden of this change on financial institutions, the Bureau has determined that, at this point in time, the appropriate approach is to only permit self-identification of the disaggregated categories. That is, only an applicant may use the disaggregated categories to identify his or her ethnicity or race. When an application is taken in person and the applicant does not provide the information, the final rule will continue to require loan originators to collect, on the basis of visual observation or surname, the minimum OMB categories of ethnicity and race. The Bureau believes that this approach balances the value of disaggregated data on ethnicity and race to further HMDA's purposes with the potential burdens on financial institutions.

Accordingly, the Bureau is modifying appendix B by adding a new instruction to require a financial institution to collect an applicant's ethnicity, race, and sex on the basis of visual observation or surname when the applicant does not provide the requested information for an application taken in person, by selecting from the following OMB minimum categories: Ethnicity (Hispanic or Latino; not Hispanic or Latino); race (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White). The Bureau is also modifying appendix B by adding a new instruction to provide that only an applicant may self-identify as being of a particular Hispanic or Latino subcategory (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) or of a particular Asian subcategory (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian) or of a particular Native Hawaiian or Other Pacific Islander subcategory (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) or of a particular American Indian or Alaska Native enrolled or principal tribe. The

Bureau recognizes the change to the collection and reporting of ethnicity and race under HMDA may raise concerns regarding applicant and borrower privacy. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

Similar to the Census questionnaire and as outlined above in the new data standards the Bureau is adopting for the collection and reporting of an applicant's ethnicity and race, the Bureau is modifying the sample data collection form in appendix B to allow an applicant to provide a particular Hispanic or Latino origin when ''Other Hispanic or Latino'' is selected by the applicant, a particular Asian race when ''Other Asian'' is selected by the applicant, a particular Other Pacific Islander race when ''Other Pacific Islander'' is selected by the applicant, and lastly, the name of the enrolled or principal tribe when the applicant selects American Indian or Alaska Native race. The Bureau believes that this may encourage self-reporting by applicants by offering, as the Census does, an option for applicants to provide a specific Hispanic/Latino origin and race, which promotes self-identification and will improve the HMDA data's usefulness.

In addition, in order to facilitate compliance, the Bureau has determined that it will limit the number of particular racial designations of applicants that are required to be reported by financial institutions. The Bureau reviewed recent Census data to consider the occurrence of respondents that self-identify as being of more than one particular race. For example, the 2010 Census data shows that of the Asian population where only Asian was reported as the respondents' race, only 0.11 percent of those self-identified as being of three particular Asian races, while only 0.02 percent self-identified as being of seven particular Asian races. Regulation C currently requires financial institutions to report up to five racial designations of an applicant. The Bureau believes that the likelihood of applicants self-identifying as being of more than five particular racial designations is low. Accordingly, the Bureau is adopting a new instruction 9 in appendix B, which provides that a financial institution must offer the applicant the option of selecting more than one particular ethnicity or race. The new instruction provides that if an applicant selects more than one particular ethnicity or race, a financial institution must report each selected designation, subject to the limits described in the instruction.

With respect to ethnicity, the instruction requires a financial institution to report each aggregate ethnicity category and each ethnicity subcategory selected by the applicant. In addition, the instruction explains that if an applicant selects the Other Hispanic or Latino ethnicity subcategory, the applicant may also provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories. In such a case, the instruction requires a financial institution to report both the selection of Other Hispanic or Latino and the additional information provided by the applicant.

With respect to race, the instruction requires a financial institution to report every aggregate race category selected by the applicant. If the applicant also selects one or more race subcategories, the instruction requires the financial institution to report each race subcategory selected by the applicant, except that the financial institution must not report more than a total of five aggregate race categories and race subcategories combined. The instruction provides illustrative examples to facilitate HMDA compliance. In addition, the instruction explains that if an applicant selects the Other Asian race subcategory or the Other Pacific Islander race subcategory, the applicant may also provide a particular Other Asian or Other Pacific Islander race not listed in the standard subcategories. In either such case, the instruction requires a financial institution to report both the selection of Other Asian or Other Pacific Islander, as applicable, and the additional information provided by the applicant, subject to the five-race maximum. In all such cases where the applicant has selected an Other race subcategory and also provided additional information, for purposes of the five-race maximum, the Other race subcategory and additional information provided by the applicant together constitute only one selection. The instruction provides an illustrative example to facilitate compliance.

The Bureau is also modifying the introductory paragraph in the sample data collection form in appendix B in an effort to improve the explanation provided to applicants by financial institutions as to why their demographic information is being collected. In response to the Bureau's solicitation for feedback on ways to improve the data collection on ethnicity, race, and sex, a few commenters stated that applicants may be reluctant to provide their demographic information because they do not understand why it is being collected or for what purposes. For example, an industry commenter suggested that the language explaining to the applicant why the information is being requested should be in plain language and contain less legalese in order for an applicant to feel more comfortable in responding to the request. Another industry commenter suggested that applicants who choose not to provide their demographic information may be concerned that by doing so, such information may negatively influence the credit decision made by a financial institution. The Bureau believes that the explanation provided to applicants by financial institutions should clearly state why their demographic information is being collected and for what purposes such information is requested by the Federal government. Accordingly, the Bureau is modifying the introductory paragraph in the sample data collection form in appendix B to include the following sentences: ''The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, race, and sex) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws.'' The Bureau is adopting other changes to the introductory paragraph in the sample data collection form to align with the new data standards on collection and reporting of ethnicity and race.

In order to align with the modified introductory paragraph in the sample data collection form, the Bureau is also adopting new instruction 2, which clarifies that a financial institution must inform applicants that Federal law requires collection of their demographic information in order to protect consumers and to monitor compliance with Federal statutes that prohibit discrimination against applicants on the basis of ethnicity, race, and sex. The Bureau is also modifying the title of the sample data collection form. A few commenters stated that ''Information for Government Monitoring Purposes'' may discourage applicants from providing their demographic information. For example, by using the words ''government monitoring,'' a few industry commenters suggested that applicants may view the collection of this information as intrusive or intimidating, as opposed to ensuring that they are protected from discrimination. Another industry

commenter stated that some applicants are not aware that Federal statutes and regulations protect them from discrimination and that ''government monitoring information'' promotes a sense among applicants that the financial institution's credit decision is based, at least in part, on their demographic information. The Bureau has considered this feedback and determined that the title of the sample data collection form should be modified in order to address the concern that the current title may discourage applicants from providing their demographic information. Accordingly, the Bureau is modifying the title of the sample data collection form to ''Demographic Information of Applicant and Co-Applicant.''

The Bureau has determined that modifying the introductory paragraph in the sample data collection form and its title, as well as adopting new instruction 2 in appendix B, will assist financial institutions in explaining to applicants the purposes of collecting their demographic information and how the information is used. The Bureau believes that these changes may improve the HMDA data's usefulness by encouraging applicants to provide their demographic information.

The Bureau is also modifying instruction 1 in appendix B, which currently provides that for applications taken by telephone, the information in the collection form must be stated orally by the lender, except for that information which pertains uniquely to applications taken in writing. The Bureau has received questions regarding the meaning of the phrase ''except for that information which pertains uniquely to applications taken in writing.'' The Bureau has modified this instruction in the final rule and provides an illustrative example, which will address confusion regarding this phrase.

The Bureau is also modifying the sample data collection form by allowing applicants to select ''I do not wish to provide this information'' separately for ethnicity, race, and sex. Previously, the sample data collection form provided a ''I do not wish to furnish this information'' box at the top of the form, which applied to ethnicity, race, and sex as a group. The Bureau believes that modifying the selection to include a ''I do not wish to provide this information'' box following the request for the applicant's ethnicity, race, and sex will allow an applicant to more clearly articulate a decision to decline to provide certain information but not other information. Additional guidance on this topic had been published in the FFIEC FAQs.[289] The Bureau believes it is appropriate to modify the sample data collection form in appendix B, adapted from the FFIEC FAQs, to improve the collection of this information and assist financial institutions with HMDA compliance.

The Bureau is also proposing to add four new instructions to appendix B to provide additional guidance regarding the reporting requirement under § 1003.4(a)(10)(i). First, the Bureau received feedback requesting that it clarify whether a financial institution must report the demographic information of a guarantor. To help facilitate HMDA compliance, the Bureau is adopting new instruction 4 in appendix B, which clarifies that for purposes of § 1003.4(a)(10)(i), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's ethnicity, race, and sex. While the terms ''applicant'' and ''borrower'' may include guarantors in other regulations,[290] the Bureau believes the inclusion of information regarding the ethnicity, race, and sex of guarantors in the HMDA data would be unnecessarily burdensome and potentially lead to inconsistencies in the data.

Second, an industry commenter pointed out that the Bureau's proposed instruction 4(a)(10)–2.a provides ''You need not collect or report this information for covered loans purchased. If you choose not to report this information for covered loans that you purchase, use the Codes for not applicable.'' However, the Bureau's proposed instructions 4(a)(10)(i)–2.c, 4(a)(10)(i)–3.b, 4(a)(10)(i)–4.a, and 4(a)(10)(ii)–1.d instructed financial institutions to report the corresponding code for ''not applicable'' for ethnicity, race, sex, age, and income ''when the applicant or co-applicant information is unavailable because the covered loan has been purchased by your institution.'' The Bureau agrees that these instructions do not align and has determined that a clarification will facilitate HMDA compliance. Consequently, the Bureau is adopting new instruction 6 in appendix B, which requires that when a financial institution purchases a covered loan and chooses not to report the applicant's or co-applicant's ethnicity, race, and sex, the financial institution reports that the requirement is not applicable.

Third, prior to the Bureau's proposal, financial institutions had expressed uncertainty as to whether a trust is a non-natural person for purposes of HMDA. In response, the Bureau proposed to add ''trust'' to the list of examples in the technical instructions in appendix A, which direct financial institutions to report the code for ''not applicable'' if the borrower or applicant is not a natural person. A few commenters supported the proposed clarification. The Bureau has determined that the proposed clarification will facilitate HMDA compliance. Consequently, the Bureau is adopting new instruction 7, which provides, in part, a financial institution reports that the requirement to report the applicant's or co-applicant's ethnicity, race, and sex is not applicable when the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). The new instruction clarifies that for a transaction involving a trust, a financial institution reports that the requirement is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution reports the applicant's ethnicity, race, and sex.

Lastly, the Bureau is adopting new instruction 13 in appendix B, which clarifies how a financial institution should report partial demographic information provided by an applicant. Additional guidance on this topic had been published in the FFIEC FAQs.[291] The Bureau believes it is appropriate to include an instruction in appendix B, adapted from the FFIEC FAQs, to assist financial institutions with HMDA compliance.

For the reasons discussed above, the Bureau is adopting proposed § 1003.4(a)(10)(i), with the following substantive change. The Bureau is requiring financial institutions to report whether the applicant's or co-applicant's ethnicity, race, and sex was collected on the basis of visual observation or surname. Consequently, § 1003.4(a)(10)(i) and appendix B of the final rule require a financial institution to collect and report the applicant's or co-applicant's ethnicity, race, and sex, and whether this information was collected on the basis of visual observation or surname.

In addition, for the reasons discussed above, the Bureau is adding new instructions, as well as modifying a few of the current instructions, in appendix B and the sample data collection form

[289] *See http://www.ffiec.gov/hmda/faqreg.htm#threeboxes.*

[290] For example, Regulation B defines the term ''applicant'' to include guarantors, sureties, endorsers, and similar parties for some purposes. *See* 12 CFR 1002.2(e).

[291] *See http://www.ffiec.gov/hmda/faqreg.htm#collectioninfo.*

in order to facilitate compliance with the new collection and reporting requirements relating to an applicant's ethnicity, race, and sex. The Bureau is adopting proposed comments 4(a)(10)(i)–1, –2, –3, –4, and –5 as new instructions 8, 10, 12, 5, and 3, respectively, in appendix B, modified to conform to the changes the Bureau is finalizing in § 1003.4(a)(10)(i) and to provide additional clarity as to the data collection requirements. In addition, as discussed above, the Bureau is adopting new instructions 4, 6, 7, 9, 11, and 13 in appendix B. The Bureau has modified proposed comment 4(a)(10)(i)–1, which directs financial institutions to refer to appendix B for instructions on collection of an applicant's ethnicity, race, and sex. By placing all of the data collection instructions with respect to an applicant's ethnicity, race, and sex in one location—appendix B—the Bureau has streamlined the regulatory requirements in an effort to reduce compliance burden. The Bureau has determined that these data collection instructions in appendix B and the revised sample data collection form, discussed above, will help facilitate HMDA compliance by providing additional guidance regarding the reporting requirements under § 1003.4(a)(10)(i).

Lastly, in order to facilitate compliance with the new collection and reporting requirements in § 1003.4(a)(10)(i) and appendix B relating to an applicant's ethnicity, race, and sex, the Bureau added new comment 4(a)(10)(i)–2 in the final rule and provides an illustrative example. Comment 4(a)(10)(i)–2 provides that if a financial institution receives an application prior to January 1, 2018, but final action is taken on or after January 1, 2018, the financial institution complies with § 1003.4(a)(10)(i) and (b) if it collects the information in accordance with the requirements in effect at the time the information was collected. For example, if a financial institution receives an application on November 15, 2017, collects the applicant's ethnicity, race, and sex in accordance with the instructions in effect on that date, and takes final action on the application on January 5, 2018, the financial institution has complied with the requirements of § 1003.4(a)(10)(i) and (b), even though those instructions changed after the information was collected but before the date of final action. However, if, in this example, the financial institution collected the applicant's ethnicity, race, and sex on or after January 1, 2018, § 1003.4(a)(10)(i) and (b) requires the financial institution to collect the information in accordance with the amended instructions.

4(a)(10)(ii)

Section 1094(3)(A)(i) of the Dodd-Frank Act amended HMDA section 304(b)(4) to require financial institutions to report an applicant's or borrower's age.[292] The Bureau proposed to implement the requirement to collect and report age by adding this characteristic to the information listed in proposed § 1003.4(a)(10)(i). In light of potential applicant and borrower privacy concerns related to reporting date of birth, the Bureau proposed that financial institutions enter the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form.

The Bureau solicited feedback regarding whether this was an appropriate manner of collecting the age of applicants. Many commenters expressed concern about potential privacy implications if the Bureau requires financial institutions to report an applicant's age or if the Bureau were to release such data to the public. As with other proposed data points like credit score, commenters were concerned that if information regarding an applicant's or borrower's age is made available to the public, such information could be coupled with other publicly available information, such as the security instrument and other local records, in a way that compromises an applicant's or borrower's privacy. A national trade association commented that by increasing the scope of HMDA reporting, the Bureau would increase potential privacy risks of consumers. The commenter argued that expansive new data elements, like age, result in an unjustifiable privacy intrusion by providing information that allows someone to identify applicants and borrowers along with a detailed picture of their financial state. Similarly, an industry commenter suggested that in addition to the potential for criminal misuse of a borrower's financial information, the availability of the expanded data released under HMDA will very likely permit marketers to access the information which will result in aggressive marketing that is ''personalized'' to unsophisticated and vulnerable consumers for potentially harmful financial products and services. Another State trade association recommended that the Bureau strengthen its data protection as it relates to the selective disclosure of HMDA data to third parties and specifically recommended that the Bureau convert actual values to ranges or normalize values before sharing the data with a third party. The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

In contrast, many consumer advocate commenters stated that requiring financial institutions to report an applicant's age is vital information that allows the public to evaluate age biases in lending, especially in conjunction with reverse mortgages. These commenters stated that the public needs to know the extent of reverse mortgage lending for various categories of older adults to ensure that various age cohorts are being served and are not being abused. Another commenter stated that an applicant's age is an important element for understanding patterns of mortgage lending and noted that mortgage underwriting standards may contribute to disparate outcomes in homeownership among different age cohorts. Another commenter stated that requiring financial institutions to report a borrower's age is important to ensure that borrowers in any particular age category are not experiencing undue barriers to mortgage credit.

Many commenters also provided feedback regarding the Bureau's request as to whether there was a less burdensome way for financial institutions to collect such information for purposes of HMDA. For example, many industry commenters recommended that the Bureau require financial institutions to report age as a ''range of values'' rather than an applicant's or borrower's actual age. The commenters suggested that reporting an applicant's age as a range of values will eliminate a substantial number of potential errors on financial institutions' loan/application registers, would better protect the privacy of applicants, and would not compromise the integrity of the HMDA data. Another industry commenter generally agreed that applicants' age information would be useful to users of the HMDA data when analyzing housing trends and a financial institution's fair lending performance, but recommended that the Bureau require reporting of an applicant's date of birth and not the actual age of the applicant. Another industry commenter explained that it only requires date of birth on its applications and not age specifically. If the Bureau implements the requirement to report the applicant's age in years, the commenter stated that the consequence would be that

[292] 12 U.S.C. 2803(b)(4).

customized loan application forms would need to be amended to include this additional information or institutions would need to manually calculate an applicant's age, which will significantly increase both the burden of this reporting requirement and errors. A few industry commenters stated that the costs of the proposed requirement would not be justified. Other industry commenters stated that calculating an applicant's actual age will be an unnecessary burden and an area of potentially high error rate, and as such, the Bureau should require reporting of the applicant's year of birth.

The Bureau has considered this feedback and determined that requiring financial institutions to report the applicant's actual age—and not the applicant's date of birth, year of birth, or a range within which an applicant's age falls—is the appropriate method of implementing HMDA section 304(b)(4) and carrying out HMDA's purposes. In light of potential applicant and borrower privacy concerns related to reporting date of birth or year of birth, the Bureau has determined that requiring financial institutions to report the applicant's actual age is the proper approach. The Bureau has also determined that requiring financial institutions to report age as a range of values would diminish the utility of the data to further HMDA's purposes. By requiring financial institutions to report the applicant's actual age, this information will assist in identifying whether financial institutions are serving the housing needs of their communities, identifying possible discriminatory lending patterns, and enforcing antidiscrimination statutes. The Bureau recognizes that a requirement to collect and report the applicant's age may impose some burden on financial institutions and that requiring financial institutions to calculate the age of an applicant in number of years by referring to the date of birth as shown on the application form may result in potential calculation errors. However, the Bureau has determined that the benefits of this reporting requirement justify any burdens and financial institutions will have to manage the risk of an error in calculating an applicant's age to ensure HMDA compliance.

The final rule renumbers proposed § 1003.4(a)(10)(i) and moves the requirement to collect the age of the applicant or borrower to § 1003.4(a)(10)(ii). The new numbering is intended only for ease of reference and is not a substantive change. In addition, in order to help facilitate HMDA compliance, the Bureau is moving the proposed commentary regarding the reporting requirements for an applicant's and borrower's age into new comments. The Bureau is adopting new comments 4(a)(10)(ii)–1, –2, –3, –4, and –5.

The Bureau is adopting new comment 4(a)(10)(ii)–1, which explains that a financial institution complies with § 1003.4(a)(10)(ii) by reporting the applicant's age, as of the application date under § 1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form, and provides an illustrative example. This requirement aligns with the definition of age under Regulation B.[293]

Similar to the requirement applicable to an applicant's ethnicity, race, and sex, the Bureau is adopting new comment 4(a)(10)(ii)–2, which clarifies that if there are no co-applicants, a financial institution reports that there is no co-applicant. On the other hand, if there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form. The comment also explains that a co-applicant may provide the absent co-applicant's age on behalf of the absent co-applicant.

The Bureau is adopting new comment 4(a)(10)(ii)–3, which clarifies when a financial institution reports that the requirement is not applicable. Similar to the requirement applicable to an applicant's ethnicity, race, and sex, comment 4(a)(10)(ii)–3 explains that for a covered loan that the financial institution purchases and for which the institution chooses not to report the applicant's or co-applicant's age, the financial institution reports that the requirement is not applicable. In addition, comment 4(a)(10)(ii)–4 explains that a financial institution reports that the requirement to report the applicant's or co-applicant's age is not applicable when the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust), and provides an illustrative example.

Lastly, the Bureau received feedback requesting that it clarify whether a financial institution must report the demographic information of a guarantor. Similar to the requirement applicable to an applicant's ethnicity, race, and sex, the Bureau is adopting new comment 4(a)(10)(ii)–5, which clarifies that for purposes of § 1003.4(a)(10)(ii), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's age. These five new comments will help facilitate HMDA compliance by providing guidance on the reporting requirements regarding an applicant's or borrower's age.

4(a)(10)(iii)

HMDA section 304(b)(4) requires the reporting of income level for borrowers and applicants. Section 1003.4(a)(10) of Regulation C implements this requirement by requiring collection and reporting of the applicant's gross annual income relied on in processing the application. Proposed § 1003.4(a)(10)(ii) revised the current rule to require the reporting of gross annual income relied on in making the credit decision requiring consideration of income or, if a credit decision requiring consideration of income was not made, the gross annual income collected as part of the application process. The Bureau also proposed amendments to the commentary and two new illustrative comments. The Bureau is adopting § 1003.4(a)(10)(iii), renumbered from proposed § 1003.4(a)(10)(ii), and comments 4(a)(10)(iii)–1 through –10.

The Bureau received feedback on proposed § 1003.4(a)(10)(ii) and its commentary from a small number of commenters. A handful of commenters, including consumer advocates and industry commenters, expressed support for proposed § 1003.4(a)(10)(ii). As information about an applicant's or borrower's income provides information about underwriting decisions and access to credit, the Bureau believes that collecting it is important for achieving HMDA's purposes: to identify possible fair lending violations, to understand whether financial institutions are meeting the housing needs of their communities, and to help policymakers allocate public investments so as to attract private capital. Therefore, it is appropriate to continue to require financial institutions to report information about an applicant's or borrower's gross annual income.

A few industry commenters addressed challenges associated with reporting the gross annual income relied on in making the credit decision. One commenter suggested requiring

[293] The Bureau's Regulation B requires, as part of the application for credit, a creditor to request the age of an applicant for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal dwelling, where the credit will be secured by the dwelling. Regulation B § 1002.13(a)(1)(iv). Age has been a protected category under ECOA and Regulation B since 1976, and a creditor may not discriminate against an applicant on the basis of age regarding any aspect of a credit transaction, including home mortgage lending. *See* Regulation B §§ 1002.1(b), 1002.4(a)(b), 15 U.S.C. 1691(a)(1). Under Regulation B, ''age'' refers ''only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.'' Regulation B § 1002.2(d).

reporting of the income obtained from a readily verifiable source instead of the gross annual income relied on in making the credit decision. Others asked for clarification about what is meant by gross annual income, including whether gross annual income requires reporting of the income that the financial institution has verified. It is not necessary to modify proposed § 1003.4(a)(10)(ii) to allow financial institutions that rely on the verified gross annual income to report the verified gross annual income. Proposed § 1003.4(a)(10)(ii) provided flexibility for the financial institution to report the gross annual income that the financial institution relied on in making the credit decision for the loan or application that the institution is reporting. Under the proposal, if a financial institution relied on the verified gross annual income, then the institution would report the verified gross annual income. In addition, in circumstances when a financial institution did not rely on the verified gross annual income, the financial institution would report the gross annual income that it relied on in making the credit decision. The Bureau believes that it is important to maintain this flexibility in the final rule and accordingly is not adopting commenters' suggestions to change the requirement. However, in response to the comments, the Bureau is modifying proposed comment 4(a)(10)(ii)–1, renumbered as comment 4(a)(10)(iii)–1, to clarify that a financial institution reports the verified gross annual income when the financial institution relied on the verified gross annual income in making the credit decision.

Some industry commenters also raised concerns about public disclosure of this information. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of the data.

Other industry commenters urged the Bureau to consider excluding certain types of loans, such as multifamily loans, business purpose loans, and purchased loans, from the requirement to report income in proposed § 1003.4(a)(10)(ii). The final rule effectively excludes these loans from income reporting. New comment 4(a)(10)(iii)–7 excludes loans to non-natural persons and new comment 4(a)(10)(iii)–8 excludes those related to multifamily dwellings from the requirement to report income information. New comment 4(a)(10)(iii)–9 provides that reporting income information is optional for purchased loans. However, as discussed in comments 4(a)–3 and –4, a financial institution that reviews an application for a covered loan, makes a credit decision on that application prior to closing, and purchases the covered loan after closing will report the covered loan that it purchases as an origination, not a purchase. Accordingly, in those circumstances, the final rule requires the financial institution to report the gross annual income that it relied on in making the credit decision.

Other industry commenters expressed concerns about the proposed requirement to report the gross annual income collected as part of the application process. One commenter urged the Bureau to only require reporting of income information if it is relied on in making a credit decision. Another commenter urged the Bureau to require reporting of the most recent verified income, instead of the income stated by the borrower, because institutions update income throughout the application process to take into account new information. Another commenter suggested that collecting income information that is not verified is inconsistent with the Bureau's 2013 ATR Final Rule, which the commenter stated requires income to be verified.

Information concerning income on applications when no credit decision was made provides valuable data to understand access to credit and underwriting decisions. The Bureau recognizes, however, as suggested by commenters, that the proposal's description of the requirement to report income in those circumstances created confusion about what income information to report. To respond to the concerns raised by the commenters, the Bureau is not adopting the language in proposed § 1003.4(a)(10)(ii) that describes reporting income on applications when no credit decision was made. Instead, the Bureau is retaining the language currently used in § 1003.4(a)(10) to describe what to report in that circumstance. The final rule provides that if a credit decision is not made, a financial institution reports the gross annual income relied on in processing the application for a covered loan that requires consideration of income. In that case, the financial institution should report whatever income information it was relying on when the application was withdrawn or closed for incompleteness, which could include the income information provided by the applicant initially, any additional income information provided by the applicant during the application process, and any adjustments to that information during the application process due to the institution's policies and procedures. These adjustments may include, for example, reducing the income amount to reflect verified income or to eliminate types of income not considered by the financial institution. In addition, proposed comment 4(a)(10)(ii)–5, finalized as comment 4(a)(10)(iii)–5, is revised to clarify that a financial institution is not necessarily required to report the income information initially provided on the application. Rather, the financial institution may update the income information initially provided by the applicant with additional information collected from the applicant if it relies on that additional information in processing the application.

Another industry commenter expressed concerns about proposed comment 4(a)(10)(ii)–4, which explained that an institution should not include as income, amounts considered in making a credit decision based on factors that an institution relies on in addition to income. For example, the proposal directed financial institutions not to include as income any amounts derived from annuitization or depletion of an applicant's remaining assets. The commenter noted that proposed comment 4(a)(10)(ii)–4 would be difficult to implement because lenders would have to create new data fields to identify and exclude annuitized income. In addition, the commenter stated that adopting the proposed comment would create a distorted picture of an applicant's cash flow. The Bureau is finalizing proposed comment 4(a)(10)(ii)–4, renumbered as comment 4(a)(10)(iii)–4, to focus on applicant income as distinct from an applicant's assets or other resources. Although financial institutions may rely on assets or other resources in underwriting a loan, including amounts other than income, such as assets, would result in data that is less useful and less accurate. Therefore, it would not be appropriate to report that information as income.

For the reasons discussed above, the Bureau is finalizing proposed § 1003.4(a)(10)(ii), renumbered as § 1003.4(a)(10)(iii), with technical modifications for clarification. The Bureau is also finalizing proposed comments 4(a)(10)(ii)–1 through –6, renumbered as comments 4(a)(10)(iii)–1 through –6, with clarifying modifications to provide illustrative examples. The Bureau is also moving proposed instruction 4(a)(10)–2.a into new comment 4(a)(10)(iii)–9 and proposed instruction 4(a)(10)(ii)–1 into new comments 4(a)(10)(iii)–7, –8, and –10.

4(a)(11)

Current § 1003.4(a)(11) requires financial institutions to report the type of entity purchasing a loan that the financial institution originates or purchases and then sells within the same calendar year, and provides that this information need not be included in quarterly updates.[294] In conjunction with the Bureau's proposal to require quarterly data reporting by certain financial institutions as described further below in the section-by-section analysis of § 1003.5(a)(1)(ii), the Bureau proposed to modify § 1003.4(a)(11) by deleting the statement that the information about the type of purchaser need not be included in quarterly updates. In addition, the Bureau proposed technical modifications to current comments 4(a)(11)–1 and –2 and also proposed to add six new comments to provide additional guidance regarding the type of purchaser reporting requirement.

The Bureau solicited feedback regarding whether the proposed comments were appropriate and specifically solicited feedback regarding whether additional clarifications would assist financial institutions in complying with proposed § 1003.4(a)(11). The Bureau received a few comments.

With respect to the Bureau's proposal that the type of purchaser data be included in quarterly reporting by certain financial institutions, one industry commenter stated that the proposal did not specify how a quarterly reporter would report a loan it originated in one quarter and sold in another quarter during the same year. The Bureau proposed an instruction, which it is adopting as new comment 4(a)(11)–9 with the following clarifications: A financial institution records that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during the calendar quarter for which the institution is recording the data; if the financial institution sells the covered loan in a subsequent quarter of the same calendar year, the financial institution records the type of purchaser on its loan/application register for the quarter in which the covered loan was sold; if the financial institution sells the covered loan in a succeeding year, the institution should not record the sale. For clarity, the Bureau also adopts new comment 4(a)(11)–10, which provides that a financial institution reports that the requirement is not applicable for applications that were denied, withdrawn, closed for incompleteness or approved but not accepted by the applicant; and for preapproval requests that were denied or approved but not accepted by the applicant. The new comment also provides that a financial institution reports that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during that same calendar year.

The Bureau proposed comment 4(a)(11)–3, which clarifies when a financial institution shall report the code for ''affiliate institution'' by providing a definition of the term ''affiliate'' and clarifying that for purposes of proposed § 1003.4(a)(11), the term ''affiliate'' means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). One industry commenter stated that it is difficult for a financial institution to determine the correct code to report for the type of purchaser, especially when mergers, acquisitions, and affiliates are involved in the transaction, and recommended that financial institutions simply report ''sold'' or ''kept in portfolio'' for this requirement. Another industry commenter stated that the proposed definition of ''affiliate'' remains unclear and urged the Bureau to align the definition with existing regulations, including the Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (SAFE Act).

The Bureau considered the recommendation to require reporting of whether a particular loan has been ''sold'' within the same calendar year or ''kept in portfolio,'' but has determined that requiring reporting of the type of purchaser is the more appropriate approach. The type of purchaser information reported under HMDA provides valuable information, for example, by helping data users understand the secondary mortgage market. A requirement to simply report whether a particular loan was ''sold'' or ''kept in portfolio'' would greatly diminish the utility of this HMDA data. In addition, the Bureau has determined that the proposed definition of ''affiliate'' is appropriate and provides clarity as to when a financial institution should report that the type of purchaser is an affiliate institution. The Bureau considered other definitions of ''affiliate'' across various laws and regulations and has concluded that for purposes of reporting the type of purchaser under HMDA, the definition of ''affiliate'' established in the Bank Holding Company Act is appropriate.

Appendix A to § 1003.4(a)(11) groups ''life insurance company, credit union, mortgage bank, or finance company'' into one category when reporting type of purchaser. The Bureau did not propose to change this grouping. However, one commenter recommended that ''insurance companies'' be separated from ''life insurance company, credit union, mortgage bank, or finance company.'' The commenter argued that separating insurance companies from other types of purchasers would result in improved data with respect to both information about the ultimate source of financing in the multifamily market and information about secondary-market financing provided by credit unions, mortgage banks, and finance companies. In response, the Bureau is adopting a new modification that will permit reporting that the purchaser type is a life insurance company separately from other purchaser types.

The Bureau is also modifying proposed comment 4(a)(11)–5 by replacing ''mortgage bank'' with ''mortgage company'' and clarifying that for purposes of § 1003.4(a)(11), a mortgage company means a nondepository institution that purchases mortgage loans and typically originates such loans. Additional guidance on this topic had been published in the FFIEC FAQs.[295] The Bureau believes this clarification, adapted from the FFIEC FAQs, will facilitate compliance with the type of purchaser reporting requirement.

The Bureau is adopting § 1003.4(a)(11) as proposed. The Bureau is also adopting comments 4(a)(11)–1 through –8, with several technical and clarifying modifications, and new comments 4(a)(11)–9 and –10 to help facilitate HMDA compliance by providing additional guidance regarding the type of purchaser reporting requirement.

4(a)(12)

HMDA section 304(b)(5)(B) requires financial institutions to report mortgage loan information, grouped according to measurements of ''the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans.'' [296] Currently, Regulation C requires financial institutions to report the difference between a loan's annual

[294] 12 CFR 1002.4(a)(11); *see also* 12 U.S.C. 2803(h)(1)(C) (authorizing regulations that ''require disclosure of the class of the purchaser of such loans'').

[295] *See http://www.ffiec.gov/hmda/faqreg.htm#mrtgbanks.*

[296] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended HMDA by adding section 304(b)(5)(B), which expanded the rate spread reporting requirement beyond higher-priced mortgage loans.

percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction, as of the date the interest rate is set, if the difference equals or exceeds 1.5 percentage points for first-lien loans, or 3.5 percentage points for subordinate-lien loans. The Bureau proposed to implement HMDA section 304(b)(5)(B) in § 1003.4(a)(12), by requiring financial institutions to report, for covered loans subject to Regulation Z, 12 CFR part 1026, other than purchased loans and reverse mortgage transactions, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(12) generally as proposed, but with a modification to exclude assumptions.

The Bureau solicited comment on the general utility of the revised rate spread data and on the costs associated with collecting and reporting. Several industry commenters and a few trade associations opposed the Bureau's proposal requiring rate spread information. One commenter stated that certain financial institutions should be exempted from the rate spread reporting requirement on covered loans and applications. Industry commenters were generally concerned about the burden associated with reporting rate spread data for more transactions than what is currently collected and reported. In particular, commenters pointed to the expense or additional work required to calculate the rate spread, such as the need to update software. One industry commenter stated that current systems determine rate spread and provide a numerical difference if the difference exceeds a predetermined trigger. The Bureau's proposal that the rate spread should be reported for all loans and not just the ones whose rate spread exceeds a certain threshold will require systems updates or a manual updates, according to the commenter. One commenter stated that rate spread information would not provide any meaningful data regarding access to credit on fair terms and another commenter stated that the additional regulatory burden would not be beneficial to consumers or for the purposes of antidiscriminatory monitoring.

As noted in the proposal, Congress found that improved pricing information would bring greater transparency to the market and facilitate enforcement of fair lending laws.[297] Feedback from the Board's 2010 Hearings suggested that requiring rate spread information for all loans, not just certain loans considered higher-priced, would provide a more complete understanding of the mortgage market and also improve loan analyses across various markets and communities.[298] Furthermore, the proposal noted that recent enforcement actions pursued by the U.S. Department of Justice indicated that price discrimination can occur even at levels that fall below the current higher-priced thresholds. Based on the findings of Congress, feedback from the Board's 2010 Hearings, and enforcement actions, the Bureau concluded that requiring the rate spread for most loans or applications by all financial institutions will enhance the HMDA data by providing the information that could improve loan analyses and therefore enable a better understanding of the mortgage market. The Bureau believes that such benefits will justify any additional burden imposed by the final rule.

Several industry commenters asked for clarification on whether the rate spread field will be required to be completed on loans subject to Regulation Z but exempted from the higher-priced loan category in Regulation Z § 1026.35, such as a home-equity lines of credit. The Bureau believes that the rate spread data on most transactions, including open-end lines of credit, would be beneficial by providing data to contribute to a more complete understanding of the mortgage market.

One industry commenter questioned whether reporting a covered loan's or application's APR would be a better alternative than reporting rate spread data. This commenter pointed out that reporting APR is much less burdensome than calculating the rate spread and therefore less prone to errors, such as the use of the wrong date on which to compare APR to the APOR. In addition to the risk of errors, the commenter stated that requiring the financial institution to report the rate spread information will increase the cost of preparing the report. A trade association questioned why it would not be sufficient for the APR to be reported, which would then allow the data user to select a benchmark of their choice for comparison. Although reporting the APR on the covered loan or application would reduce the burden on financial institutions reporting the rate spread data, based on the language in the Dodd-Frank Act, the Bureau believes a reasonable interpretation of HMDA section 304(b)(5)(B) is that financial institutions should report the difference between the APR and APOR. In addition, the rate spread provides a more accurate picture of a loan's price relative to the rate environment at the time of the lender's pricing decision because the date the loan's interest rate was set is not publicly available.

A few commenters warned that rate spread data could be misleading if viewed out of context. For example, a trade association commented that some loans may have higher rate spreads but offer special features, such as lower down payment requirements or waiver of an institution's private mortgage insurance requirement. Another commenter suggested that users need to be aware of the issues regarding rate spread data and pointed out that lender credits do not impact the APR and therefore the rate spread will look higher in comparison to similar loans without lender credits. Although there may be issues regarding rate spread data, the Bureau believes that it would be less burdensome on financial institutions to calculate the difference between APR, which is already a calculation performed by the financial institutions for TILA–RESPA purposes, and APOR. The Bureau does not believe that the additional burden of requiring financial institutions to take into account other factors, such as lender credits, when calculating the APR for the purposes of the rate spread would outweigh any benefit provided by this adjusted method of calculation. In addition, the Bureau believes that a reasonable interpretation of HMDA section 304(b)(5)(B) is that financial institutions should report the difference between the APR on the loan and the APOR for a comparable transaction.

The Bureau also solicited comment on the scope of the rate spread reporting requirement, including whether the requirement should be expanded to cover purchased loans. One trade association agreed with the Bureau's proposal that reverse mortgages should be exempted from rate spread reporting. A few trade associations agreed with the Bureau and commented that the rate spread reporting requirement should not be expanded to include purchased loans. One trade association reasoned this this would require a manual retroactive process to determine the APOR for the financial institution reporting the purchased loan. The Bureau recognizes the burden that

[297] H.R. Rep. No. 111–702, at 191 (2011).

[298] *See* Atlanta Hearing, *supra* note 40; Chicago Hearing, *supra* note 46; *see also* Neil Bhutta & Glenn B. Canner, Bd. of Governors of the Fed. Reserve Sys., 99 Fed. Reserve Bulletin 4, *Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA-Credit Record Data,* at 31–32 (Nov. 2013) (noting that gaps in the rate spread data limit its current usefulness for assessing fair lending compliance).

would be imposed on the financial institution reporting the purchased loan to also report the rate spread and therefore is excluding purchased covered loans from the rate spread reporting requirement as proposed.

One industry commenter asked the Bureau to clarify whether rate spread should be reported on commercial loans that do not have an APR. The Bureau did not propose to, and the final rule does not, require a financial institution to report the rate spread for commercial loans because these loans are not covered by Regulation Z, and therefore creditors are not required to calculate and disclose an APR to borrowers.

Many commenters noted that the Bureau's proposal contained inconsistent rounding methodologies across various data points, including the rate spread, and recommended that the Bureau provide a consistent rounding method. The technical instructions in current appendix A provides that the rate spread should be reported to two decimal places. If the rate spread figure is more than two decimal places, the figure should be rounded or truncated to two decimal places. The Bureau proposed that the rate spread should be rounded to three decimal places. One commenter questioned the Bureau's proposal to report the rate spread to three decimal places and stated that APR is typically disclosed to two decimal places. The Bureau acknowledges that the proposed instruction may pose some challenges for financial institutions. After considering the feedback, the Bureau has determined that the proposed instruction may be unduly burdensome on financial institutions. Consequently, the Bureau is not adopting the proposed instruction in the final rule.

The Bureau proposed comment 4(a)(12)–4.iii to provide guidance on the rounding method for calculating the rate spread for a covered loan with a term to maturity that is not in whole years. The proposed comment specifically provided that when the actual loan term is exactly halfway between two whole years, the shorter loan term should be used. This proposed comment was based on guidance published in an FFIEC FAQ.[299] One commenter pointed out that this rounding method does not follow the typical method of rounding up when a number is exactly halfway in between two others. This commenter suggested that unnecessary errors can occur as a result of this rounding method. The Bureau considered this feedback and believes that the benefit of adopting a rounding method inconsistent with the guidance published in the FFIEC FAQ for this specific calculation does not outweigh the burden because it would require a change in a financial institution's systems or processes for calculating the rate spread for the specific scenario that the proposed comment addresses. For example, financial institutions may have already instituted processes for rounding down when a loan term is exactly halfway between two years based on current FFIEC guidance. Accordingly, the Bureau is adopting comment 4(a)(12)–4.iii as proposed.

The Bureau proposed comment 4(a)(12)–5.i to illustrate the relevant date to use to determine the APOR if the interest rate in the transaction is set pursuant to a ''lock-in'' agreement between the financial institution and the borrower. The proposed comment also explained that the relevant date to use if no lock-in agreement is executed. Several industry commenters asked the Bureau to clarify the rate spread lock-in date where the transaction did not include an option to lock the loan's rate. The guidance provided in comment 4(a)(12)–5.i clarifies that, in a transaction where no lock-in agreement is executed, the relevant date to use to determine the applicable APOR is the date on which the financial institution sets the rate for the final time before closing.

Except for technical amendments to comments 4(a)(12)–3, –4.i and .ii, and –5.iii, the Bureau is adopting the commentary to § 1003.4(a)(12) substantially as proposed. In addition, the Bureau is adopting two comments that incorporate material contained in proposed appendix A into the commentary to § 1003.4(a)(12). Comments 4(a)(12)–7 and –8 primarily incorporate proposed appendix A instructions and do not contain any substantive changes.

The Bureau is making a technical change and incorporating the exclusion of assumptions from rate spread reporting in § 1003.4(a)(12), which was included in proposed appendix A and was based on FFIEC guidance. The Bureau believes that the utility that the rate spread would provide on assumptions does not justify the burden in collecting the information. Therefore, the Bureau is adopting § 1003.4(a)(12) generally to require financial institutions to report the difference between a loan's APR and APOR for a comparable transaction as of the date the interest rate is set, except for purchased loans, reverse mortgages, and loans that are not subject to Regulation Z, 12 CFR part 1026, with a modification that excludes assumptions from the scope of the rate spread reporting requirement. The Bureau believes that rate spread information on loans that are both below and above the threshold for higher-priced mortgage loans will reveal greater detail about the extent of the availability of prime lending in all communities. Pursuant to HMDA section 305(a), the Bureau is excluding purchased loans, reverse mortgages, assumptions, and loans that are not subject to Regulation Z, 12 CFR part 1026 from rate spread reporting to facilitate compliance and because information about the rate spread for such transactions could be potentially misleading.

4(a)(13)

Regulation C § 1003.4(a)(13) currently requires financial institutions to report whether a loan is subject to HOEPA, as implemented by Regulation Z § 1026.32. Prior to the proposal, the Bureau received feedback suggesting that information regarding the reason for a loan's HOEPA status might improve the usefulness of the HMDA data. Pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau proposed to require financial institutions to report for covered loans subject to HOEPA, whether the covered loan is a high-cost mortgage under Regulation Z § 1026.32(a), and the reason that the covered loan qualifies as a high-cost mortgage, if applicable. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(13) with modifications to remove the requirement to report information concerning the reasons for a loan's HOEPA status.

The Bureau solicited feedback on the general utility of the modified data and on the costs associated with reporting the data. A few commenters stated that the expanded HOEPA flag would create an unnecessary burden. Several industry commenters suggested removing the HOEPA status field from HMDA reporting. They argued that the Bureau's 2013 ATR Final Rule eliminated the origination of HOEPA loans. One financial institution stated that the proposed HOEPA flag is either not applicable to it or would offer little benefit. Another commenter stated that the HOEPA status field is unnecessary because a user should be able to determine using the rate spread whether the loan's APR meets the HOEPA trigger. Another industry commenter stated that the proposal would require financial institutions to report points and fees, final rate, and origination charges as well as the rate spread. Data users could use these data points to determine whether a loan is higher-cost.

[299] *See http://www.ffiec.gov/hmda/faqreg.htm#rate.*

A few commenters supported the HOEPA flag but suggested that the Bureau should not collect the additional information regarding the reason(s) for whether the loan is subject to HOEPA. They pointed to the burden associated with reporting the information and the Bureau's proposal to collect other information about loan pricing, such as points and fees.

An expanded HOEPA reporting requirement would have the potential to provide greater insight into which specific triggers are most prevalent among high-cost mortgages. However, the Bureau acknowledges the compliance burden associated with reporting information concerning the reasons for a loan's HOEPA status. As commenters pointed out, pricing information is available in other data fields, such as the rate spread, total points and fees, and interest rate. The benefits that would be provided by an expanded HOEPA reporting requirement does not justify the burden associated with reporting the information, particularly because other HMDA data fields capture pricing information that could be used to determine the reason for a loan's HOEPA status. In response to concerns raised by commenters regarding burden, the Bureau will only require financial institutions to report whether a loan is subject to HOEPA, as implemented by Regulation Z § 1026.32. The Bureau believes that requiring financial institutions to report whether a loan is subject to HOEPA is necessary to carry out the purposes of HMDA because an indication of a loan's HOEPA status will help determine whether financial institutions are serving the housing needs of their communities. Accordingly, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is adopting § 1003.4(a)(13) with modifications to remove the requirement to report information concerning the reasons for a loan's HOEPA status.

In addition, the Bureau is adopting new comment 4(a)(13)–1 to clarify when a financial institution reports that the HOEPA status reporting requirement is not applicable. Comment 4(a)(13)–1 explains that a financial institution reports that the requirement to report the HOEPA status is not applicable if the covered loan is not subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32. Comment 4(a)(13)–1 also explains that, if an application did not result in an origination, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable.

4(a)(14)

Current § 1003.4(a)(14) requires financial institutions to report the lien status of the loan or application (first lien, subordinate lien, or not secured by a lien on a dwelling). The technical instructions in current appendix A provide that, for loans that a financial institution originates and for applications that do not result in an origination, a financial institution shall report the lien status as one of the following: Secured by a first lien, secured by a subordinate lien, not secured by a lien, or not applicable (purchased loan). The Bureau proposed to modify § 1003.4(a)(14) to require reporting of the priority of the lien against the subject property that secures or would secure the loan in order to conform to the MISMO industry data standard, which provides the following enumerations: First lien, second lien, third lien, fourth lien, or other. The proposal also removed the current exclusion of reporting lien status on purchased loans.

The Bureau proposed technical modifications to the instruction in appendix A regarding how to enter lien status on the loan/application register. In addition, in order to provide clarity on proposed § 1003.4(a)(14), the Bureau proposed technical modifications to comment 4(a)(14)–1 and proposed new comment 4(a)(14)–2.

The Bureau solicited feedback regarding whether the Bureau should maintain the current reporting requirement (secured by a first lien or subordinate lien) modified to conform to the proposed removal of unsecured home improvement loans, or whether financial institutions prefer to report the actual priority of the lien against the property (secured by a first lien, second lien, third lien, fourth lien, or other). In response, a consumer advocate commenter supported the proposal to require reporting of the priority of the lien against the subject property and a few industry commenters stated that alignment with the MISMO industry data standard would help ensure consistency.

However, most of the commenters that responded to this solicitation of feedback opposed the proposal to require reporting of the priority of the lien against the subject property and recommended that the Bureau continue to require reporting the lien status of the loan or application as either first lien or subordinate lien. In general, industry commenters stated that very few loans are secured by liens beyond a second lien and that as a result, the additional burden of reporting the actual lien priority would outweigh the potential utility of the data. For example, an industry commenter argued that a lien status beyond a second lien is rare and that reporting the actual lien status will not add much value to the HMDA data. A State trade association suggested that requiring financial institutions to specify the exact lien priority of the mortgage would result in little useful data and yet the burden would be excessive and unnecessary.

In addition, with respect to potential privacy implications, a few commenters were concerned that if information regarding lien priority is made available to the public, such information could be coupled with other publicly available information on property sales and ownership records to compromise a borrower's privacy. The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

While HMDA compliance and data submission can be made easier by aligning the requirements of Regulation C, to the extent practicable, to existing industry standards for collecting and transmitting mortgage data, the Bureau has determined that requiring reporting of the lien status of the loan or application as either first lien or subordinate lien is the appropriate approach. Based on the comments the Bureau received, it appears that the burdens associated with reporting the various enumerations (first lien, second lien, third lien, fourth lien, and other) may not outweigh the benefits discussed in the Bureau's proposal—namely, enhanced data collected under Regulation C and facilitating compliance by better aligning the data collected with industry practice. Accordingly, the Bureau does not adopt § 1003.4(a)(14) as proposed but instead maintains the current reporting requirement (secured by a first lien or subordinate lien) modified to conform to the removal of non-dwelling-secured home improvement loans, and adopts corresponding modifications to the proposed commentary.

The Bureau also solicited feedback on the general utility of lien status data on purchased loans and on the unique costs and burdens associated with collecting and reporting the data that financial institutions may face as a result of the proposal. A few industry commenters did not support the Bureau's proposal to remove the current exclusion of reporting lien status on purchased loans. For example, one

industry commenter suggested that such data is not an indicator of discriminatory lending and also that such information is better examined on a loan-by-loan basis by bank examiners. Another industry commenter did not support the proposed reporting requirement because it would be a regulatory burden with no particular benefit.

While requiring financial institutions to report the lien status of purchased loans would add some burden on financial institutions, the Bureau has determined that such data will further enhance the utility of HMDA data overall. Given that loan terms, including loan pricing, vary based on lien status, and in light of the Bureau's determination to require reporting of certain pricing data for purchased loans, such as the interest rate, lender credits, total origination charges, and total discount points, the Bureau has determined that requiring financial institutions to report the lien status of purchased loans will improve the HMDA data's usefulness overall. In addition, as described in the Bureau's proposal, the liquidity provided by the secondary market is a critical component of the modern mortgage market, and information about the types of loans being purchased in a particular area, and the pricing terms associated with those purchased loans, is needed to understand whether the housing needs of communities are being fulfilled. Furthermore, local and State housing finance agency programs facilitate the mortgage market for low- to moderate-income borrowers, often by offering programs to purchase or insure loans originated by a private institution. Since the HMDA data reported by financial institutions does not include the lien status of purchased loans, it is difficult to determine the pricing characteristics of the private secondary market. Lien status information on purchased loans may help public entities, such as local and State housing finance agencies, understand how to complement the liquidity provided by the secondary market in certain communities, thereby maximizing the effectiveness of such public programs. Requiring that such data be reported may assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. Additionally, providing lien status information to purchasers is standard industry practice.

For these reasons, the Bureau has determined that data on the lien status of purchased loans will further the purposes of HMDA in determining whether financial institutions are serving the housing needs of their communities; in distributing public-sector investments so as to attract private investment to areas or communities where it is needed; and in identifying possible discriminatory lending patterns. Pursuant to the Bureau's authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is adopting the modification to § 1003.4(a)(14) to require reporting of lien status information—whether the covered loan is a first or subordinate lien—for purchased loans.

Lastly, in order to facilitate HMDA compliance, the Bureau is modifying comment 4(a)(14)–1.i to clarify that financial institutions are required to report lien status for covered loans they originate and purchase and applications that do not result in originations, which include preapproval requests that are approved but not accepted, preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness. The Bureau is also adopting proposed comment 4(a)(14)–2, which directs financial institutions to comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4(a)(15)

Neither HMDA nor Regulation C historically has required reporting of information relating to an applicant's or borrower's credit score. Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to require financial institutions to report ''the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe.'' [300] The Bureau proposed § 1003.4(a)(15) to implement this requirement.[301] Except for purchased covered loans, proposed § 1003.4(a)(15)(i) requires financial institutions to report the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. In addition, the Dodd-Frank Act amendments to HMDA do not provide a definition of ''credit score.'' Therefore, the Bureau proposed in § 1003.4(a)(15)(ii) to interpret ''credit score'' to have the same meaning as in section 609(f)(2)(A) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681g(f)(2)(A).

The Bureau also proposed instruction 4(a)(15)–1, which directed financial institutions to enter the credit scores relied on in making the credit decision and proposed instruction 4(a)(15)–2, which provided the codes that financial institutions would use for each credit score reported to indicate the name and version of the scoring model used to generate the credit score relied on in making the credit decision.

In addition, the Bureau proposed four comments to provide clarification on the reporting requirement under proposed § 1003.4(a)(15). The Bureau proposed comment 4(a)(15)–1, which explained that a financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a dispositive factor, and provided an illustrative example. Proposed comment 4(a)(15)–2 addressed circumstances where a financial institution obtains or creates multiple credit scores for a single applicant or borrower, as well as circumstances in which a financial institution relies on multiple scores for the applicant or borrower in making the credit decision, and provided illustrative examples. Proposed comment 4(a)(15)–3 addressed situations involving credit scores for multiple applicants or borrowers and provided illustrative examples. Finally, proposed comment 4(a)(15)–4 clarified that a financial institution complies with proposed § 1003.4(a)(15) by reporting ''not applicable'' when a credit decision is not made, for example, if a file was closed for incompleteness or the application was withdrawn before a credit decision was made. Proposed comment 4(a)(15)–4 also clarified that a financial institution complies with proposed § 1003.4(a)(15) by reporting ''not applicable'' if it makes a credit decision without relying on a credit score for the applicant or borrower.

In order to facilitate HMDA compliance and address concerns that it could be burdensome to identify credit score information for purchased covered loans, the Bureau excluded purchased covered loans from the requirements of proposed § 1003.4(a)(15)(i). The Bureau solicited feedback on whether this exclusion was appropriate and received a few comments. A national trade association supported the Bureau's proposal to exclude purchased covered

[300] 12 U.S.C. 2803(b)(6)(I).

[301] The Dodd-Frank amendments to HMDA added new provisions directing the Bureau to develop regulations that ''modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public,'' and identified credit score as a new data point that may raise privacy concerns. HMDA sections 304(h)(1)(E) and (h)(3)(A)(i). See part II.B above for discussion of the Bureau's approach to protecting applicant and borrower privacy in light of the goals of HMDA.

loans from the proposed reporting requirement under § 1003.4(a)(15)(i) without providing further explanation. One consumer advocate commenter did not oppose the proposal so long as the ULI is included in the final rule, because it can be used to link origination data to purchased loans. Similarly, another consumer advocate commenter recommended that until the ULI is successfully implemented, purchased loans should not be excluded from the credit score data reporting requirement. Finally, two other consumer advocate commenters argued that credit score should be reported for purchased loans. One of these commenters stated that the Bureau's proposed exclusion of purchased loans from § 1003.4(a)(15)(i) will have the negative effect of not requiring financial institutions to report credit score information even when the applicant or borrower's credit score is in its possession or the institution could easily obtain it. The commenter suggested that any exception for purchased loans under proposed § 1003.4(a)(15)(i) should be limited only to instances where the financial institution does not have and cannot reasonably obtain the credit score. The other commenter recommended that purchasers of covered loans should use the ULI to look up credit score information from the HMDA data associated with the loan's origination, or should request the information from the originator if the loan was not made by a financial institution required to report under HMDA.

The Bureau has considered this feedback and has determined that it would be unduly burdensome for financial institutions that purchase loans to identify the credit score or scores relied on in making the underlying credit decision and the name and version of the scoring model used to generate each credit score. Consequently, the Bureau is adopting the exclusion of purchased covered loans proposed under § 1003.4(a)(15)(i). The Bureau is also adopting new comment 4(a)(15)&6 which explains that a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

The Bureau solicited feedback on whether the Bureau should require any other related information to assist in interpreting credit score data, such as the date on which the credit score was created. In response, a few consumer advocate commenters specifically recommended that the Bureau require disclosure of the date on which the credit score was created. One commenter pointed out that this additional information will provide for richer data for purposes of statistical analysis. Other commenters stated that credit scores are essentially analyses of risk at a given point in time and thus the meaning of the score is relative to the date on which it was created, and that the date on which the credit score was created would allow the Bureau to ensure that financial institutions are treating borrowers equally when using credit score information.

In contrast, a few industry commenters did not support requiring the date on which the credit score was created arguing that such additional data is not necessary. For example, one industry commenter stated that while credit scores can change, they usually do not significantly change in a short period of time. A national trade association stated that additional data related to credit score, such as the date, should not be required because it is superfluous information and would be burdensome to report for financial institutions.

The Bureau has considered the feedback received and has determined that requiring financial institutions to report the date on which the credit score was created would not add sufficient value to the credit score information that will be required to be reported to warrant the additional burden placed on financial institutions. Accordingly, a financial institution will not be required to report the date on which the credit score was created under § 1003.4(a)(15).

In response to the Bureau's solicitation for feedback on whether it should require any other related information to assist in interpreting credit score data, a few consumer advocate commenters recommended that the Bureau also require financial institutions to report the name of the credit reporting agency that provided the underlying data to create the credit score (*i.e.,* Equifax, Experian, or TransUnion). One commenter stated that in some cases, the proposed required disclosure of the ''name and version'' of the credit scoring model by a financial institution will indicate which credit reporting agency's data was used. For example, the disclosure will reveal not only that a ''FICO'' score was used, but that a ''Beacon'' score (the FICO 04 score based on Equifax data) was used. However, in other cases, such as VantageScore, the commenter stated that the name or the version of the credit scoring model will not indicate which credit reporting agency's data was used. In order to address the latter scenario, the commenter recommended that the Bureau require financial institutions to report the credit reporting agency whose data was used to generate the credit score that is reported.

The Bureau has considered this feedback and has determined that it will not require financial institutions to report the name of the credit reporting agency that provided the underlying credit score data that institutions report under § 1003.4(a)(15). Requiring that this additional information be reported would add burden on financial institutions, which the Bureau has determined is not justified by the value of the data.

In response to the Bureau's general solicitation for feedback, several industry commenters recommended that the Bureau require financial institutions to report credit score as a ''range of values'' rather than an applicant's or borrower's actual credit score. The commenters suggested that reporting credit score as a range of values will eliminate a substantial number of potential errors on financial institutions' loan/application registers, would better protect the privacy of applicants, and would not compromise the integrity of the HMDA data. In contrast, one consumer advocate commenter argued that an applicant's or borrower's precise credit score is important because financial institutions may use different cutoff points in their underwriting processes which may not align with the provided ranges. The Bureau has considered this feedback and determined that requiring financial institutions to report credit score as a range of values would diminish the utility of the data to further HMDA's purposes. The Bureau has determined that requiring financial institutions to report the applicant's or borrower's actual credit score or scores relied on in making the credit decision is the appropriate approach and will assist in identifying whether financial institutions are serving the housing needs of their communities, identifying possible discriminatory lending patterns, and enforcing antidiscrimination statutes.

The Bureau solicited feedback on whether the proposed codes that financial institutions would use for each credit score reported to indicate the name and version of the scoring model used to generate the credit score relied on in making the credit decision are appropriate for reporting credit score data, including using a free-form text field to indicate the name and version of the scoring model when the code for ''Other credit scoring model'' is reported by financial institutions. The Bureau also invited comment on any alternative

approaches that might be used for reporting this information.

In response, a few commenters did not support the Bureau's proposed instruction 4(a)(15)–2.b, which instructs financial institutions to provide the name and version of the scoring model used in a free-form text field if the credit scoring model is one that is not listed. One commenter recommended that the Bureau not require a free-form text field for credit score because the data would be impossible to aggregate and would cause significant confusion. As an alternative, the commenter recommended that the Bureau maintain its proposal that financial institutions report the code for ''Other credit scoring model'' when appropriate but not require institutions to indicate the name and version of the scoring model in a free-form text field. Another industry commenter stated that free-form text fields are illogical because they lack the ability of being sorted and reported accurately. This commenter also opined that the additional staff and/or programming that will be needed on a government level to analyze these free text fields is costly and not justified when looking at the minimal impact these fields have on the overall data collection under HMDA.

The Bureau has considered the concerns expressed by industry commenters with respect to the proposed requirement that a financial institution enter the name and version of the scoring model in a free-form text field when ''Other credit scoring model'' is reported but has determined that the utility of this data justifies the potential burden that may be imposed by the reporting requirement. As to the commenters' concern that credit scoring model data reported in the free-form text field would be impossible to aggregate due to the variety of potential names and versions of scoring model reported, the Bureau has determined that the data reported in the free-form text field will be useful even if the data cannot be aggregated.

Lastly, with respect to the commenters' recommendation that requiring a financial institution to report the corresponding code for ''Other credit scoring model'' is sufficient and that the Bureau should not also require an institution to enter the name and version of the scoring model in a free-form text field in these circumstances, the Bureau has determined that such an approach would hinder the utility of the credit score data for purposes of HMDA. When a financial institution reports ''Other credit scoring model'' in the loan/application register without further explanation as to what the other credit scoring model is, it would be difficult to perform accurate analyses of such data since different models are associated with different scoring ranges and some models may even have different ranges depending on the version used. Moreover, the free-form text field will provide key information on credit scoring models that are used by financial institutions to underwrite a loan but are not currently listed. For example, the data reported in the free-form text field for ''Other credit scoring model'' can be used to monitor those credit scoring models or to add commonly used, but previously unlisted, credit scoring models to the list. As such, the Bureau has determined that the HMDA data's usefulness will be improved by requiring financial institutions to report in a free-form text field the name and version of the scoring model when the institution reports ''Other credit scoring model'' on its loan/application register.

The Bureau invited comment on whether it was appropriate to request the name and version of the scoring model under proposed § 1003.4(a)(15)(i). For a variety of reasons, several industry commenters did not support the Bureau's proposal to include the name and version of the credit scoring model used to generate the credit score relied on in making the credit decision. In general, the commenters stated that while they support requiring financial institutions to report the credit score relied on in making the credit decision, reporting the name and version of the credit scoring model used to generate that score would impose significant regulatory and operational burden on industry. Commenters also stated that the Bureau had failed to provide compelling reasons for how the collection and reporting of this additional credit score data ensures fair access to credit in the residential mortgage market. In addition, commenters did not support the Bureau's proposal requiring financial institutions to report the credit scoring model used to generate the credit score on the grounds that the Dodd-Frank Act mandated that an applicant's or borrower's credit score be reported, but not additional data on the credit scoring model.

In contrast, the vast majority of commenters supported the Bureau's proposal to require financial institutions to report not only the credit score or scores relied on in making the credit decision, but also the name and version of the scoring model used to generate each credit score. Several consumer advocate commenters pointed out that the name and version of the scoring model used to generate the credit score relied on in making the credit decision is needed to accurately interpret the credit score field. These commenters stated that requiring financial institutions to report this information is vital because each credit scoring model may generate different credit scores which may confound simple comparisons. Some industry commenters also supported the Bureau's proposal. One industry commenter stated that for purposes of fair lending analysis, credit score information is vital to understanding a financial institution's credit and pricing decision and that without such information, inaccurate conclusions may be reached by users of HMDA data.

The Bureau has considered this feedback and determined that its proposal to require financial institutions to report the credit score or scores relied on in making the credit decision is the appropriate approach and is a reasonable interpretation of HMDA section 304(b)(6)(I). The Bureau has also determined that its interpretation of HMDA section 304(b)(6)(I) to require the name and version of the scoring model is reasonable because, as discussed above, this information is necessary to understand any credit scores that will be reported, as different models are associated with different scoring ranges and some models may even have different ranges depending on the version used.[302] In addition, the Bureau's implementation is authorized by HMDA sections 305(a) and 304(b)(6)(J), and is necessary and proper to effectuate the purposes of HMDA, because, among other reasons, the name and version of the credit scoring model facilitates accurate analyses of whether financial institutions are serving the housing needs of their communities by providing adequate home financing to qualified applicants. Accordingly, the Bureau is adopting § 1003.4(a)(15)(i) as proposed.

As discussed above, the Bureau proposed § 1003.4(a)(15)(ii), which provides that ''credit score'' has the meaning set forth in 15 U.S.C. 1681g(f)(2)(A). The Bureau's proposal interpreted ''credit score'' to have the same meaning as in section 609(f)(2)(A) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681g(f)(2)(A). However, the Bureau solicited feedback on whether Regulation C should instead use a different definition of ''credit score.''

[302] For example, the range for VantageScore 3.0 scores is 300 to 850, but earlier VantageScore models have a range of 501 to 990. *See* VantageScore, *How the Scores Range, http://your.vantagescore.com/interpret_scores.*

For example, the Bureau suggested that it could define ''credit score'' based on the Regulation B definitions of ''credit scoring system'' or ''empirically derived, demonstrably and statistically sound, credit scoring system.'' [303] Another alternative would be to interpret credit score to mean the probability of default, using a concept similar to the probability of default metric that the FDIC uses in determining assessment rates for large and highly complex insured depository institutions.[304]

The commenters that provided feedback on the proposed definition of ''credit score'' supported the Bureau's proposal to use the FCRA section 609(f)(2)(A) definition of credit score. For example, one consumer advocate commenter stated that it supports the Bureau's proposal to use the definition of ''credit score'' set forth in the FCRA because the definition is familiar to industry, regulators, and other stakeholders. Similarly, another consumer advocate commenter stated that it supports the definition because it would facilitate compliance. The Bureau has considered this feedback and determined that the FCRA section 609(f)(2)(A) definition of ''credit score'' is the most appropriate because it provides a general purpose definition that is familiar to financial institutions that are already subject to FCRA and Regulation V requirements. Consequently, the Bureau is adopting § 1003.4(a)(15)(ii) generally as proposed, but with technical modifications for clarity.

Lastly, many commenters expressed concern about potential privacy implications if the Bureau collects credit score data or if it were to release credit score data to the public. As with other proposed data points like property value, commenters were concerned that if information regarding credit score data is made available to the public, such information could be coupled with other publicly available information, such as property sales and ownership records, in a way that compromises a borrower's privacy. A State trade association commented that public disclosure of credit score data creates the ability for unscrupulous third parties to specifically identify borrowers and directly market to those borrowers. The commenter suggested that these third parties would have access to a sufficient amount of information disclosed through HMDA and coupled with other information, such as public recordation information, to give the appearance through their marketing that they have some connection to the original lender. Similarly, an industry commenter suggested that in addition to the potential for criminal misuse of a borrower's financial information, the availability of the expanded data released under HMDA will very likely permit marketers to access the information which will result in aggressive marketing that is ''personalized'' to unsophisticated and vulnerable consumers for potentially harmful financial products and services. Another State trade association stated that credit score data should not be released to the public because collecting and releasing credit score data could lead to fraudsters, neighbors, marketers, and others learning very private pieces of information about the applicant or borrower. Another State trade association recommended that the Bureau strengthen its data protection as it relates to the selective disclosure of HMDA data to third parties and specifically recommended that the Bureau convert actual values to ranges or normalize values before sharing the data with a third party. The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

As discussed above, the Bureau is adopting § 1003.4(a)(15)(i) as proposed and § 1003.4(a)(15)(ii) generally as proposed, but with technical modifications for clarity. The Bureau is adopting comments 4(a)(15)–1 and –2, as proposed. The Bureau is also adopting comment 4(a)(15)–3 as proposed with a clarification that in a transaction involving two or more applicants or borrowers for which the financial institution obtains or creates a single credit score, and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for either the applicant or first co-applicant.

With regard to a financial institution reporting that the requirement is not applicable, the Bureau is modifying comment 4(a)(15)–4 by maintaining in that comment the guidance with respect to transactions for which no credit decision was made and moves the guidance with respect to transactions for which credit score was not relied on to new comment 4(a)(15)–5. The Bureau clarifies in comment 4(a)(15)–4 that if a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. As discussed above, the Bureau is also adopting new comment 4(a)(15)–6, which clarifies that a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan. The Bureau is also adopting new comment 4(a)(15)–7, which clarifies that when the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

4(a)(16)

Section 1003.4(c)(1) currently permits optional reporting of the reasons for denial of a loan application. However, certain financial institutions supervised by the OCC and the FDIC are required by those agencies to report denial reasons on their HMDA loan/application registers.[305] The Bureau proposed § 1003.4(a)(16), which requires mandatory reporting of denial reasons by all financial institutions.

The Bureau proposed instruction 4(a)(16) in appendix A, which modified the current instruction and provided technical instructions regarding how to enter the denial reason data on the loan/application register. First, proposed instruction 4(a)(16)–1 provided that a financial institution must indicate the principal reason(s) for denial, indicating up to three reasons. Second, the Bureau explained in proposed instruction 4(a)(16)–2 that, when a financial institution denies an application for a principal reason not included on the list of denial reasons in appendix A, the institution should enter the corresponding code for ''Other'' and also enter the principal denial reason(s) in a free-form text field. Third, the Bureau added a code for ''not applicable'' and explained in proposed instruction 4(a)(16)–3 that this code should be used by a financial institution if the action taken on the application was not a denial pursuant to § 1003.4(a)(8), such as if the application

[303] According to Regulation B, a credit scoring system is ''a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.'' Regulation B § 1002.2(p)(1). The four-part definition of an ''empirically derived, demonstrably and statistically sound, credit scoring system'' in Regulation B § 1002.2(p)(1) establishes the criteria that a credit system must meet in order to use age as a predictive factor. Regulation B comment 2(p)–1.

[304] FDIC Assessments, Large Bank Pricing, 77 FR 66000 (Oct. 31, 2012).

[305] 12 CFR 27.3(a)(1)(i), 128.6, 390.147.

was withdrawn before a credit decision was made or the file was closed for incompleteness. Lastly, the Bureau also proposed to renumber current instruction I.F.2 of appendix A as proposed instruction 4(a)(16)–4, which explains how a financial institution that uses the model form for adverse action contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) should report the denial reasons for purposes of HMDA, including entering the principal denial reason(s) in a free-form text field when the financial institution enters the corresponding code for ''Other.''

In addition, the Bureau proposed comment 4(a)(16)–1 to provide clarity as to what the Bureau requires with respect to a financial institution reporting the principal reason(s) for denial. The Bureau also proposed comment 4(a)(16)–2 to align with proposed instructions 4(a)(16)–2 and –4.

A few industry commenters did not support the Bureau's proposal and recommended that reporting of denial reasons remain optional under Regulation C. The main reason offered by commenters was that a mandatory requirement to report denial reasons would increase regulatory burden on financial institutions. In contrast, most consumer advocate commenters supported the Bureau's proposed § 1003.4(a)(16). For example, several consumer advocate commenters pointed out that different types of housing counseling and intervention is needed depending on the most frequent reasons for denial. These commenters stated that denial reason data is important to housing counseling agencies because it helps identify the most significant impediments to homeownership and provide more effective counseling. A government commenter noted that denial reasons will be particularly effective for fair lending analyses. Another consumer advocate commenter pointed out that denial reason data will be helpful for understanding why a particular loan application was denied and identifying potential barriers in access to credit.

The Bureau has determined that maintaining the current requirement of optional reporting of denial reasons is not the appropriate approach given the value of the data in furthering HMDA's purposes. The reasons an application is denied are critical to understanding a financial institution's credit decision and to screen for potential violations of antidiscrimination laws, such as ECOA and the Fair Housing Act.[306] Denial reasons are important for a variety of purposes including, for example, assisting examiners in their reviews of denial disparities and underwriting exceptions. The Bureau has determined that requiring the collection of the reasons for denial will facilitate more efficient, and less burdensome, fair lending examinations by the Bureau and other financial regulatory agencies, thereby furthering HMDA's purpose of assisting in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

The Bureau acknowledges that mandatory reporting of denial reasons will contribute to certain financial institutions' compliance burden. However, the statistical value of optionally reported data is lessened because of the lack of standardization across all HMDA reporters. Moreover, as discussed above, certain financial institutions supervised by the OCC and the FDIC are already required by those agencies to report denial reasons.[307] A requirement that all financial institutions report reasons for denial of an application is the proper approach for purposes of HMDA. For these reasons, pursuant to its authority under HMDA sections 305(a) and 304(b)(6)(J), the Bureau is finalizing the requirement that all financial institutions report reasons for denial of an application. This information is necessary to carry out HMDA's purposes, because it will provide more consistent and meaningful data, which will assist in identifying whether financial institutions are serving the housing needs of their communities, as well as assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

The Bureau solicited feedback on the proposed requirement that a financial institution enter the principal denial reason(s) in a free-form text field when ''Other'' is entered in the loan/application register. Several commenters did not support the proposed requirement for a variety of reasons, including, for example, concerns about having sufficient space to accurately or adequately capture the denial reason with the limited space available for reporting on the loan/application register, concerns that denial reason data reported in the free-form text field would be impossible to aggregate due to the variety of potential denial reasons reported, and concerns that such reporting would cause significant confusion and regulatory burden. A few industry commenters suggested that requiring a financial institution to report the corresponding code for ''Other'' would be sufficient when the institution denies an application for a principal reason not included on the list of denial reasons in appendix A or on the model form for adverse action contained in appendix C to Regulation B. The commenters suggested that the Bureau should not also require an institution to enter the principal denial reason(s) in a free-form text field in these circumstances for the reasons listed above.

The Bureau has considered the concerns expressed by industry commenters with respect to the proposed requirement that a financial institution enter the principal denial reason(s) in a free-form text field when a financial institution reports the denial reason as ''Other'' in the loan/application register but has determined that the utility of this data justifies the potential burden that may be imposed by the reporting requirement. In addition, with respect to the concern that financial institutions will not have sufficient space in the loan/application register to accurately or adequately capture the denial reasons, the Bureau believes that the free-form text field will provide institutions with sufficient space to comply with proposed § 1003.4(a)(16). As explained in proposed comment 4(a)(16)–1, the denial reasons reported by a financial institution must be specific and accurately describe the principal reason or reasons an institution denied the application. The free-form text field will not limit a financial institution's ability to comply with proposed § 1003.4(a)(16). As to the commenters' concern that denial reason data reported in the free-form text field would be impossible to aggregate due to the variety of potential denial reasons reported, the Bureau has determined that the data reported in the free-form text field will be useful even if the data cannot be aggregated. The Bureau also proposed comment 4(a)(16)–2, which provides clarification as to the proposed requirement that a financial institution enter the principal denial reason(s) in a free-form text field when ''Other'' is entered in the loan/application register. The Bureau is finalizing this comment, modified for additional clarity, to address any potential confusion.

Lastly, with respect to the commenters' recommendation that it be sufficient to require a financial institution to report ''Other'' as the denial reason and that the Bureau

[306] 15 U.S.C. 1691 *et seq.*; 42 U.S.C. 3601 *et seq.* ECOA and Regulation B require all financial institutions to provide applicants the reasons for denial, or a notice of their right to receive those denial reasons, and to maintain records of compliance. *See* Regulation B §§ 1002.9 and 1002.12, 15 U.S.C. 1691(d).

[307] *See supra* note 306.

should not also require an institution to enter the principal denial reason(s) in a free-form text field in these circumstances, the Bureau has determined that such an approach would hinder the utility of the denial reason data for purposes of HMDA. Many consumer advocate commenters pointed out that transparency about denial reasons provides the public as well as regulators with the information needed to better understand challenges to access to credit. One commenter specifically pointed out the reporting accuracy of denial reasons will be improved in two ways if financial institutions are required to explain the denial reason in the free-form text field when the institution indicates ''Other'' as a reason for denial. First, the commenter suggested that this reporting requirement will prevent the misuse of the ''Other'' category when financial institutions report the denial reason as ''Other'' when in fact the denial reason may more appropriately fall into one or more of the listed denial reasons. Without further explanation as to what the ''Other'' denial reason actually is, the commenter stated that it has been impossible to tell if the financial institution accurately reported the denial reason. Second, the commenter stated that the free-form text field will provide key information on denial reasons that are not currently listed. For example, the denial reason data can be used to monitor other denial reasons or to add common, but previously unlisted, denial reasons to the list. The Bureau has determined that the HMDA data's usefulness will be improved by requiring financial institutions to report the principal reason(s) it denied the application in a free-form text field when the institution reports the denial reason as ''Other'' in the loan/application register.

The Bureau solicited feedback regarding whether additional clarifications would assist financial institutions in complying with the proposed requirement. A few industry commenters pointed out that while the proposal requires a financial institution to report up to three principal reasons for denial, the commenters read Regulation B as providing that a creditor may provide up to four principal reasons for denial and such inconsistency between regulations adds to the compliance burden imposed by the Bureau's new mandatory reporting requirement under proposed § 1003.4(a)(16). The adverse action notification provisions of Regulation B do not mandate that a specific number of reasons be disclosed when a creditor denies an application but instead provides that disclosure of more than four reasons is not likely to be helpful to the applicant.[308] In light of the feedback on the proposal and in an effort to help facilitate compliance and consistency between regulations, the Bureau is modifying proposed comment 4(a)(16)–1 to provide that a financial institution complies with § 1003.4(a)(16) by reporting the principal reason or reasons it denied the application, indicating up to four reasons.

In order to help facilitate compliance with proposed § 1003.4(a)(16), the Bureau also adopts two new comments. The Bureau is adopting new comment 4(a)(16)–2, which clarifies that a request for a preapproval under a preapproval program as defined by § 1003.2(b)(2) is an application and therefore, if a financial institution denies a preapproval request, the financial institution complies with § 1003.4(a)(16) by reporting the reason or reasons it denied the preapproval request. The Bureau also adopts new comment 4(a)(16)–4, which clarifies that a financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the action taken on the application, pursuant to § 1003.4(a)(8), is not a denial. For example, a financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the loan is originated or purchased by the financial institution, or the application or preapproval request was approved but not accepted, or the application was withdrawn before a credit decision was made, or the file was closed for incompleteness.

Several commenters were also concerned that if information regarding denial reasons were made available to the public, such information could be coupled with other publicly available information, which would result in not only compromising a borrower's privacy but also potentially place consumers at greater risk of financial harm through unlawful marketing to consumers by unscrupulous parties, such as identify thieves, other scammers, or criminals. For example, one industry commenter suggested that ''unsophisticated consumers could be vulnerable to aggressive marketing techniques, which may appear even more 'personalized' to their situation because of the availability of their specific financial picture through the LAR data.'' The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

The Bureau is adopting § 1003.4(a)(16) as proposed, with minor technical modifications. The Bureau is adopting proposed comments 4(a)(16)–1 and 4(a)(16)–2, with several technical and clarifying modifications, and renumbers proposed comment 4(a)(16)–2 as 4(a)(16)–3. In addition, as discussed above, the Bureau is adopting new comments 4(a)(16)–2 and –4, which will help facilitate HMDA compliance by providing additional guidance regarding the denial reason reporting requirement.

4(a)(17)

Section 304(b)(5)(A) of HMDA [309] provides for reporting of ''the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4).'' [310] The Bureau proposed to implement this provision through proposed § 1003.4(a)(17), which required financial institutions to report the total points and fees charged in connection with certain mortgage loans or applications. Proposed § 1003.4(a)(17) defined total points and fees by reference to TILA, as implemented by Regulation Z § 1026.32(b)(1) or (2). Section 1026.32(b)(1) defines ''points and fees'' for closed-end credit transactions, while § 1026.32(b)(2) defines ''points and fees'' for open-end credit transactions. Proposed § 1003.4(a)(17) would have applied to applications for and originations of certain closed-end mortgage loans and open-end lines of credit, but not to reverse mortgages or commercial-purpose loans or lines of credit.

The Bureau also solicited comment on the costs and benefits of the proposed

[308] *See* Regulation B § 1002.9, Supp. I., § 1002.9, comment 9(b)(2)–1. The Bureau noted in its proposal that ECOA and Regulation B require creditors to provide applicants the reasons for denial, or a notice of their right to receive those denial reasons, and to maintain records of compliance. *See* 79 FR 51731, 51775 (Aug. 29, 2014), note 381. *See also* 15 U.S.C. 1691(d), Regulation B §§ 1002.9 and 1002.12.

[309] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to provide for the reporting of total points and fees.

[310] 15 U.S.C. 1602(aa)(4) is part of TILA. Prior to amendments made by the Dodd-Frank Act, that section generally defined ''points and fees'' for the purpose of determining whether a transaction was a high-cost mortgage. *See* 15 U.S.C. 1602(aa)(4). Section 1100A of the Dodd-Frank Act redesignated subsection 1602(aa)(4) as subsection 1602(bb)(4), where it is currently codified. In light of that redesignation, the Bureau interprets HMDA section 304(b)(5)(A) as directing it to take into account 15 U.S.C. 1602(bb)(4) and its implementing regulations, as those provisions address ''points and fees'' and because current subsection 1602(aa)(4) is no longer relevant to a determination regarding points and fees.

definition of total points and fees and on the specific charges that should be included or excluded. Additionally, in discussing proposed § 1003.4(a)(18), the Bureau sought feedback on the merits of a more inclusive measure of the cost of a loan.

For the reasons provided below, the Bureau is requiring financial institutions to report the total loan costs for any covered loan that is both subject to the ability-to-repay section of the Bureau's 2013 ATR Final Rule and for which a Closing Disclosure is required under the Bureau's 2013 TILA–RESPA Final Rule. Total loan costs are disclosed pursuant to Regulation Z § 1026.38(f)(4). For a covered loan that is subject to the ability-to-repay section of the Bureau's 2013 ATR Final Rule but for which a Closing Disclosure is not required under the Bureau's 2013 TILA–RESPA Final Rule, financial institutions must report the total points and fees, unless the covered loan is a purchased covered loan. This reporting requirement does not apply to applications or to covered loans not subject to the ability-to-repay requirements in the 2013 ATR Final Rule, such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes.

Commenters were divided on whether financial institutions should be required to report points-and-fees data. Most consumer advocates generally supported the proposed pricing data points, including total points and fees. These commenters explained that more detailed pricing information will improve their ability to identify potential price discrimination and to understand the terms on which consumers in their communities are being offered credit. One consumer advocate stated that certain groups, such as women, minorities, and borrowers of manufactured housing loans may be unfairly charged higher amounts of points and fees than other borrowers. This commenter also stated that the total amount of points and fees was important for determining a loan's status under HOEPA and the ability-to-repay and qualified mortgage requirements of Regulation Z, and that data about points and fees would clarify any need for further regulation.

Industry commenters, on the other hand, generally opposed collection of points-and-fees data. Many commenters stated that reporting the data would be unduly burdensome because of uncertainty regarding the definition of points and fees or because the total is not required to be calculated by other regulations. Other commenters believed that points-and-fees data would mislead users or duplicate data reported pursuant to other provisions of the proposal. Finally, a few commenters claimed that the data would not be valuable for HMDA purposes.

Specifically, several industry commenters stated that variance among the fees and charges included in points and fees may result in unclear data. One commenter noted that the points-and-fees calculation adjusts based on factors unrelated to the total loan cost, such as whether a particular charge was paid to an affiliate of the creditor. Similarly, other industry commenters stated that the total amount of points and fees was subject to factors that would prevent effective comparison among borrowers, such as daily market fluctuations, differences in location, and borrower decisionmaking.

The Bureau believes that total points-and-fees data, as defined in proposed § 1003.4(a)(17), would have some value in helping HMDA data users to understand certain fees and charges imposed on borrowers. However, after considering the comments, the Bureau concludes that other measures of loan cost, such as total loan costs, as defined in final § 1003.4(a)(17)(i), will be more valuable and nuanced than points and fees, as defined in proposed § 1003.4(a)(17), and will better capture the type of information that HMDA section 304(b)(5)(A) is intended to cover. Total loan costs are the total upfront costs involved in obtaining a mortgage loan. Specifically, for covered loans subject to the disclosure requirements of Regulation Z § 1026.19(f), total loan costs are the sum of the amounts disclosed as borrower-paid at or before closing found on Line D of the Closing Cost Details page of the current Closing Disclosure, as provided for in Regulation Z § 1026.38(f)(4). Final § 1002.4(a)(17)(i) requires financial institutions to report total loan costs because they are a more comprehensive measure than total points and fees, as defined in proposed § 1003.4(a)(17), and because they better facilitate comparisons among borrowers.

Total loan costs include all amounts paid by the consumer to the creditor and loan originator for originating and extending credit, all points paid to reduce the interest rate, all amounts paid for third-party settlement services for which the consumer cannot shop, and all amounts paid for third-party settlement services for which the consumer can shop. However, total loan costs omits other closing costs, such as amounts paid to State and local governments for taxes and government fees, prepaids such as homeowner's insurance premiums, initial escrow payments at closing, and other services that are required or obtained in the real estate closing by the consumer, the seller, or another party. In other words, this total generally represents the costs that the financial institution imposes in connection with the mortgage loan, and omits costs controlled by other entities, such as government jurisdictions.

Unlike total points and fees as defined in proposed § 1003.4(a)(17), total loan costs may be more easily compared across borrowers because third-party charges are not included or excluded depending on various factors, such as whether they were paid to an affiliate of the creditor. This consistency enables users to better compare loan costs among borrowers and to understand the total upfront costs that borrowers face when obtaining mortgage loans. The amount of total loan costs may also be analyzed in combination with the other pricing data points more readily than the total points and fees. For example, the difference between the total loan costs and total origination charges provides the total amount the borrower paid for third-party services.[311] Because of the improved utility of total loan costs, for covered loans subject to final § 1003.4(a)(17) for which total loan costs are available, the final rule requires financial institutions to report total loan costs.

The Bureau acknowledges that total loan costs do not include all closing costs. For example, total loan costs omit amounts paid to State and local governments for taxes and government fees, prepaids such as homeowner's insurance premiums, initial escrow payments at closing, and other services that are required or obtained in the real estate closing by the consumer, the seller, or another party. Many excluded closing costs, however, are unrelated to the cost of extending credit by the financial institution. Because HMDA focuses on the lending activity of financial institutions, the Bureau has determined that the exclusion of these costs is proper. Total loan costs, as provided for in the final rule, also exclude upfront charges paid by sellers or other third parties if these parties were legally obligated to pay for such costs.[312] This omission would understate the total loan costs charged by a financial institution for covered loans with seller-paid or other-paid closing costs in certain situations. However, including such costs would require financial institutions to perform

[311] Some costs, such as certain upfront mortgage insurance premiums, would not be included.

[312] *See* 12 CFR 1026.19(f)(1)(i).

a calculation that they are not otherwise performing for purposes of the Closing Disclosure. The Bureau has determined that avoiding requiring such calculations by relying on the description of total loan costs found in Regulation Z reduces burden and facilitates compliance.

Total loan costs are not currently required to be calculated for certain loans. The Bureau's 2013 TILA–RESPA Final Rule exempted certain loans from the requirement to provide a Closing Disclosure. For example, manufactured housing loans secured by personal property are exempt from the requirements of the Bureau's 2013 TILA–RESPA Final Rule. But such loans are subject to the ability-to-repay provision of the Bureau's 2013 ATR Final Rule. For these loans, final § 1003.4(a)(17) requires financial institutions to report the total points and fees, calculated pursuant to Regulation Z § 1026.32(b)(1). Although total points and fees as defined in final § 1003.4(a)(17)(ii) are a less comprehensive and less comparable measure of cost than total loan costs, requiring financial institutions to calculate the total loan costs for loans outside of the scope of the 2013 TILA–RESPA Final Rule would be overly burdensome because financial institutions would have no regulatory definition or experience on which to rely. Moreover, the Bureau believes that total points and fees as defined in final § 1003.4(a)(17)(ii) will provide valuable information about the upfront cost of a loan that would otherwise be lacking from the data. Total points and fees as defined in final § 1003.4(a)(17)(ii) include many of the same charges that comprise total loan costs, albeit in a less consistent fashion. Moreover, in some cases loans not subject to the Closing Disclosure requirement may be made to vulnerable consumers. For example, the Bureau's research suggests that manufactured-housing borrowers of chattel loans are more likely to be older, to have lower incomes, and to pay higher prices for their loans.[313] Without points-and-fees data, users would have no insight into the upfront costs associated with such loans.

Regarding the commenters' concerns about misleading data, the final rule includes a number of factors that will help users put the data in their proper context. Regarding total loan costs and total points and fees, many of the factors identified by commenters are reflected in the final rule, such as location and product type.[314] More importantly, however, the HMDA data need not reflect all conceivable determinants of loan pricing to be beneficial to users. The final rule's pricing data will provide important benefits that would be lost if the Bureau were to eliminate it entirely. For example, regulators are able to use pricing data to efficiently prioritize fair lending examinations. Prioritizing examinations based on insufficient data would result in some financial institutions facing unnecessary examination burden while others whose practices warrant closer review would not receive sufficient scrutiny. Overall, the pricing data included in the final rule represent a marked improvement over the current regulation.

One trade association stated that points-and-fees data would lead to reduced price competition. However, the Bureau believes, consistent with standard economic theory, that increased transparency regarding price generally increases competition and ultimately benefits consumers. Therefore, the Bureau is not persuaded that the commenter's price competition concern is a basis for not capturing information regarding total loan costs and points and fees, as defined in § 1003.4(a)(17). A more detailed discussion of the benefits, costs, and impacts can be found in the section 1022 discussion below.

Other industry commenters expressed concern over the burden associated with proposed § 1003.4(a)(17). For example, several industry commenters pointed out that although financial institutions face limits on points and fees if they wish to avoid coverage under the 2013 HOEPA Final Rule, and if they wish to make a qualified mortgage under the 2013 ATR Final Rule, neither rule expressly requires financial institutions to calculate that total. One industry commenter explained that the total amount of points and fees was not currently recorded electronically. Many industry commenters cited concerns over the uncertainty or complexity of the definition of points and fees. Similarly, some commenters requested guidance on what charges to include within the total points and fees or called on the Bureau to supply a ''standard'' definition of the term. Some industry commenters believed that the reporting the total points and fees would expose them to citations under Regulation C for small errors.

In comparison to the proposed rule, final § 1003.4(a)(17) substantially reduces burden while still ensuring that valuable data are reported. Commenters generally stated that the calculation of total points and fees was not completed for all loans subject to HOEPA or the Bureau's 2013 ATR Final Rule, and that, if the calculation was completed, it involved substantial uncertainty and complexity. For the vast majority of covered loans subject to final § 1003.4(a)(17), financial institutions will report the total loan costs. These institutions would have already calculated the total loan costs in order to disclose the total to borrowers pursuant to the 2013 TILA–RESPA Final Rule. Therefore, the burden of reporting for § 1003.4(a)(17) is generally limited to loans for which financial institutions would already have to calculate the total loan costs. Using the same definition across regulations was supported by several commenters with respect to total points and fees, and final § 1003.4(a)(17) does so by using the existing definition of total loan costs found in Regulation Z.

For the narrow class of loans subject to the ability-to-repay provision of the Bureau's 2013 ATR Final Rule but which are exempt from the 2013 TILA–RESPA Final Rule, financial institutions must report the total points and fees as defined in final § 1003.4(a)(17)(ii). These loans are generally manufactured housing loans secured by personal property. Because such loans run a greater risk of crossing the high-cost mortgage thresholds than site-built home loans, the Bureau believes that most financial institutions would calculate the total points and fees for these loans for compliance with HOEPA and other laws.[315] Additionally, the final rule does not increase burden on these same institutions because it uses the existing definition of ''total points and fees'' found in Regulation Z.

The final rule also avoids increased burden by limiting § 1003.4(a)(17) to covered loans that are subject to the ability-to-repay provision of the 2013 ATR Final Rule, rather than loans subject to either the 2013 ATR Final Rule or HOEPA. The primary effect of this change from the proposal is to exclude open-end lines of credit from the scope of the reporting requirement. The Bureau believes that such loans typically have lower upfront charges than comparable closed-end loans. Additionally, many open-end lines of

[313] *See* Bureau of Consumer Fin. Prot., *Manufactured-Housing Consumer Finance in the United States* at 5–6 (2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.*

[314] *See* 12 CFR 1003.4(a)(2) (loan type); *id.* at 1003.4(a)(9) (location).

[315] *See* Bureau of Consumer Fin. Prot., *Manufactured-Housing Consumer Finance in the United States* at 32–37 (2014), *available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf* (comparing the pricing of manufactured home loans and site-built home loans).

credit feature bona fide third-party charges that are waived on the condition that the consumer not terminate the line of credit sooner than 36 months after account opening, which are excluded from the total points and fees.[316] At the same time, such loans are less likely to trigger high-cost mortgage status, which makes financial institutions less likely to complete the points-and-fees calculation for such loans. Therefore, the Bureau believes that on balance, § 1003.4(a)(17) should be limited to covered loans that are subject to the ability-to-repay provision of the 2013 ATR Final Rule.

Final § 1003.4(a)(17) will provide a more consistent measure of upfront loan costs than total points and fees as defined in proposed § 1003.4(a)(17). Total loan costs, combined with total origination charges, discount points, and lender credits, will also enable a more detailed understanding of the upfront costs that borrowers pay for their loans. Accordingly, these data will provide significant utility for fair lending analysis and for understanding the terms of credit being offered. With respect to loans made to lower-income consumers, such as some borrowers in manufactured housing communities, final § 1003.4(a)(17) provides information about upfront loan costs by adopting reporting of points and fees. Finally, by substituting total loan costs for most loans and limiting the reporting of points and fees as described above, final § 1003.4(a)(17) represents a substantial decrease in burden from the proposed rule. Therefore, the Bureau is adopting final § 1003.4(a)(17), which requires financial institutions to report, for covered loans subject to the ability-to-repay provision of the 2013 ATR Final Rule, the total loan costs if the loan is subject to the disclosure requirements in § 1026.19(f), or the total points and fees if the loan is not subject to the disclosure requirements in § 1026.19(f) and is not a purchased covered loan.

The Bureau believes that final § 1003.4(a)(17) also addresses many of the specific issues or questions that commenters raised regarding the proposed points-and-fees data point. For example, several commenters asked the Bureau for clarification or modification of the scope of the reporting requirement. Two industry commenters asked the Bureau to exclude commercial loans from the scope of proposed § 1003.4(a)(17), or to confirm that commercial loans are excluded. The final rule limits § 1003.4(a)(17) to covered loans subject to Regulation Z § 1026.43(c), which is inapplicable to commercial loans. Therefore, financial institutions are not required to report the total loan costs or the total points and fees for commercial-purpose transactions. The Bureau is adopting final comment 4(a)(17)(i)–1 to clarify that the total loan costs reporting requirement is not applicable to covered loans not subject to Regulation Z § 1026.19(f), and final comment 4(a)(17)(ii)–1 to clarify that the reporting requirement is not applicable to covered loans not subject to Regulation Z § 1026.43(c).

One industry commenter recommended that no points and fees be required to be reported for applications that are not approved. This commenter also recommended that, for applications that have been approved by the financial institution but not accepted by the consumer, the total points and fees should be considered accurate if the amount is no less than the amount on which the financial institution relied. Regarding total loan costs, the Closing Disclosure required by Regulation Z § 1026.19(f) is generally not provided for applications that do not result in a closed loan. Regarding total points and fees, elements of points and fees have the highest degree of uncertainty during the application stage, which limits their utility but increases the reporting burden. Therefore, final § 1003.4(a)(17) excludes applications from the scope of the reporting requirement. Final comments 4(a)(17)(i)–1 and 4(a)(17)(ii)–1 explain that applications are not subject to the requirement to report either total loan costs or total points and fees.

A few industry commenters suggested that proposed § 1003.4(a)(17) be limited to HOEPA loans and qualified mortgages because the total points and fees would be most readily available for those loans. However, another industry commenter stated that the total points and fees were more likely to be available for loans that *exceeded* the qualified-mortgage thresholds. Finally, one industry commenter urged the Bureau to restrict the scope of proposed § 1003.4(a)(17) to loans secured by principal dwellings to better fulfill the purposes of HMDA.

These comments are largely addressed by the changes the Bureau has made in the final rule. The vast majority of covered loans subject to the requirement in § 1003.4(a)(17) are governed by the scope of Regulation Z § 1026.19(f). For these loans, final § 1003.4(a)(17) requires no calculations that would not otherwise be performed for purposes of the Closing Disclosure. Accordingly, there is no reason to exclude a particular subset of covered loans for which the total loan costs are reported. For the narrow remainder of manufactured home loans for which total points and fees are reported, the risk to consumers warrants maintaining coverage of these loans, and points and fees are a less burdensome requirement than applying regulatory definitions that would not otherwise apply to these loans. Finally, the final rule does not exclude loans secured by secondary dwellings from § 1003.4(a)(17) because HMDA's coverage is not limited to loans secured by the borrower's primary residence and includes loans secured by second homes as well as non-owner-occupied properties. Pricing data about such dwelling-secured homes will provide information necessary to better understand potentially speculative purchases of housing units similar to those that contributed to the recent financial crisis.

One industry commenter recommended that the Bureau exclude community banks from the points-and-fees reporting requirement because the calculation is burdensome and may not be completed in all cases, and because community banks avoided the irresponsible lending practices that contributed to the financial crisis.[317] Another industry commenter suggested that the Bureau require financial institutions to report either the loan's annual percentage rate or the finance charge instead of the total points and fees. This commenter stated that total points and fees require a manual calculation. As explained above, final § 1003.4(a)(17) generally does not require financial institutions to calculate an amount that would not otherwise be calculated for other regulatory requirements or purposes. The Bureau acknowledges that a financial institution may have to report points and fees for a limited set of loans for which the institution does not otherwise calculate the total points and fees, such as for manufactured housing loans secured by personal property. However, as discussed above, the Bureau believes that the burden of performing such a calculation is justified by the benefit of having some measure of fees charged to borrowers. Moreover, the APR and finance charge combine both interest and fees and do not allow users to identify the amount of fees imposed on a borrower in connection with a transaction. Therefore, the final rule does not adopt

[316] *See* 12 CFR 1026.32(b)(6)(ii).

[317] The Bureau notes that many community banks will be excluded from HMDA reporting altogether under the revised loan-volume threshold.

the changes recommended by these commenters.

Several industry commenters supported the exclusion for purchased covered loans found in proposed § 1003.4(a)(17). In fact, one industry commenter recommended excluding all data points, including pricing data, from purchased covered loans. This commenter explained that the ULI would enable tracking of purchased covered loans and believed that the exclusion of the government-sponsored enterprises, which purchase most of the covered loans, would distort the data. Conversely, a consumer advocate recommended that the Bureau require reporting of data for purchased covered loans unless the purchasing entity is unable to reasonably obtain the relevant information from the original financial institution. This commenter noted that a blanket exception for purchased covered loans would create gaps in the HMDA data, especially if the original financial institution was not subject to HMDA.

The Bureau proposed to exclude purchased loans from § 1003.4(a)(17) because the total points and fees are not readily available from the information obtained from the selling entity. Therefore, purchasing entities would be required to calculate the total points and fees, and might lack the information necessary to do so. If the purchasing financial institution required the selling entity to calculate the total points and fees, and the seller was not a HMDA reporter, then the seller would face a difficult and uncertain calculation without the benefit of having to otherwise report the data under HMDA. For these reasons, the Bureau adopts this exclusion with respect to total points and fees, as required by final § 1003.4(a)(17)(ii). However, the same reasoning does not support providing a similar exclusion from purchased loans with respect to total loan costs, as required by final § 1003.4(a)(17)(i). Unlike total points and fees, the total loan costs are calculated for all covered loans subject to the reporting requirement, and are present on the Closing Disclosure. Therefore, the Bureau is including purchased covered loans in the scope of final § 1003.4(a)(17)(ii). Final comments 4(a)(17)(i)–2 and 4(a)(17)(ii)–1 provide guidance on the scope of the total-loan-costs and total-points-and-fees reporting requirements with respect to purchased covered loans. One consumer advocate asked the Bureau to clarify the scope of proposed § 1003.4(a)(17) with respect to covered loans ''subject to'' HOEPA or the Bureau's 2013 ATR Final Rule. This commenter also urged the Bureau to expand § 1003.4(a)(17) to include home-equity lines of credit and reverse mortgages because both types of loans have been subject to abusive pricing. Proposed § 1003.4(a)(17) would have applied to open-end lines of credit secured by the borrower's principal dwelling, but would have excluded other open-end lines of credit and all reverse mortgages. The Bureau believes that the benefit of points-and-fees data on such loans does not justify the burden of reporting for the reasons discussed above. Reverse mortgages are exempt from the ability-to-repay provisions of the 2013 ATR Final Rule and the 2013 TILA–RESPA Final Rule. Therefore, extending final § 1003.4(a)(17) to reverse mortgages would require a calculation using a regulatory definition that would likely require certain modifications. The Bureau believes that this burden does not justify extending coverage to reverse mortgages or open-end lines of credit. However, the final rule will vastly improve upon the current regulation regarding the pricing information for these loans, by requiring reporting of data points such as rate spread,[318] interest rate, prepayment penalty, and nonamortizing features. Final comments 4(a)(17)(i)–1 and 4(a)(17)(ii)–1 clarify that open-end lines of credit and reverse mortgages are excluded from the scope of the total-loan-costs and total-points-and-fees reporting requirements.

Finally, many industry commenters and consumer advocates made comments that were broadly applicable to the proposed pricing data points. For example, both industry and consumer advocate commenters urged the Bureau to adopt alternative or additional pricing data points. Several industry commenters suggested that rate spread be reported instead of the other proposed pricing data points. These commenters noted that financial institutions were currently reporting the rate spread under existing Regulation C and believed that it made the other data points unnecessary. Similarly, one industry commenter proposed replacing the pricing data points with the annual percentage rate. The final rule does not adopt these suggestions because neither the rate spread nor the APR allows users to identify and compare fees imposed on borrowers.

Two commenters recommended that ''legitimate discount points'' be distinguished from other disguised charges intended to compensate the lender or mortgage broker. One of these commenters recommended different data points for direct fees, yield-spread premiums, and points that are fees. Similarly, one consumer advocate recommended that the Bureau require reporting of loan originator compensation. This commenter explained that loan originator compensation was a factor in disparate pricing, is related to abusive lending practices, and that compensation data is necessary to monitor the appropriateness of the Bureau's loan originator compensation rules.

The Bureau believes that the final pricing data points will enable HMDA data users to distinguish many of the costs about which these commenters were concerned. To the extent that additional data points would be necessary to perfectly address these commenters' concerns, the final rule does not adopt them. The final rule includes numerous data points related to loan pricing that will vastly improve the ability of users to understand and evaluate the costs associated with mortgage loans. More pricing data could increase the utility of the data, but not without imposing substantial burden on financial institutions. For example, many of the data points needed to represent various fees and charges or loan originator compensation would not be aligned with an existing regulation or appear consistently on any disclosure.

Another commenter urged the Bureau to substantially expand the pricing data required by the final rule by including upfront costs to the lender or originator, less fees for title and settlement services; discount points; lender credits; interest rate; APR; upfront fees for settlement services; and a flag to indicate whether a lender or real estate agent possess an ownership interest in the title company. This commenter explained that the data described above were necessary to examine numerous issues related to loan pricing and cost, including the existence of high title service fees and the use of discount points. The Bureau agrees that including such data would provide value to users and notes that it has adopted many of the recommended data points in the final rule, such as discount points, lender credits, and interest rate. Further expansion at this time, however, would impose an unjustified burden on financial institutions. For example, the recommendations regarding the financial institution's ownership interest in the title company and the exclusion of title and settlement service costs from the total loan costs are absent from existing regulatory definitions, Federal disclosure forms, and standard industry data formats.

[318] Rate spread applies to open-end lines of credit but not reverse mortgages. *See* § 1003.4(a)(12).

One industry commenter noted that certain pricing data points were not applicable to open-end lines of credit, such as total origination charges and total discount points. This commenter believed that this exclusion suggested that such data are not valuable. In fact, the exclusion of open-end lines of credit is a consequence of the Bureau's decision to align the data point to the Closing Disclosure and Regulation Z § 1026.38(f)(1) in order to reduce burden. As explained in greater detail below, these data points provide important price information to users. Therefore, the Bureau believes that the scope of these data points balances the benefit of the data with the burden of reporting.

For the reasons provided above, the Bureau is adopting new § 1003.4(a)(17), which requires financial institutions to report, for covered loans subject to Regulation Z § 1026.43(c), one of the following measures of loan cost: (i) If a disclosure is provided for the covered loan pursuant to Regulation Z, 12 CFR 1026.19(f), the amount of total loan costs, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(4), or, (ii) if the covered loan is not subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), and is not a purchased covered loan, the total points and fees charged in connection with the covered loan, expressed in dollars and calculated in accordance with Regulation Z, 12 CFR 1026.32(b)(1). This reporting requirement does not apply to applications or to covered loans not subject to the ability-to-repay requirements in the 2013 ATR Final Rule, such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes.

The Bureau is also adopting several new comments. Final comments 4(a)(17)(i)–1 and 4(a)(17)(ii)–1 clarify the scope of the reporting requirement. Final comment 4(a)(17)(i)–2 explains that purchased covered loans are not subject to this reporting requirement if the application was received by the selling entity prior to the effective date of Regulation Z § 1026.19(f). Final comment 4(a)(17)(ii)–2 provides guidance in situations where a financial institution has cured a points-and-fees overage. Final comment 4(a)(17)(i)–3 provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of total loan costs.

The Bureau believes that final § 1003.4(a)(17) satisfies Congress's direction to provide for reporting total points and fees ''as determined by the Bureau, taking into account'' the definition of total points and fees provided by TILA and implemented in Regulation Z § 1026.32(b).[319] In requiring reporting of a covered loan's total points and fees, Congress intended to increase transparency regarding mortgage lending and improve fair lending screening.[320] As defined in proposed § 1003.4(a)(17), total points and fees would provide information about some of the upfront costs paid by borrowers. Similarly, total loan costs, as defined in final § 1003.4(a)(17), also provide information about upfront costs paid by borrowers. Congress recognized the importance of the Bureau's expertise in deciding how to implement this measure by expressing that it should be defined ''as determined by the Bureau.'' The Bureau's implementation is consistent with that broad delegation of discretion. The Bureau has carefully considered the merits of both total points and fees, as defined in Regulation Z § 1026.32(b), and total loan costs, as defined in Regulation Z § 1026.38(f)(4). In proposing to require reporting of the total points and fees, as defined in Regulation Z § 1026.32(b), the Bureau believed that such information would enable users to gain deeper insight into the terms on which different communities are offered mortgage loans. As explained above, after reviewing public comments, the Bureau has determined that total loan costs provide greater analytical value for comparing borrowers and understanding the cost of loans than total points and fees as defined in the proposal, while reducing the burden of reporting for financial institutions. Therefore, for certain loans, total loan costs are more consistent with Congress's goals in amending HMDA than proposed § 1003.4(a)(17). For the reasons given above, final § 1003.4(a)(17) implements HMDA section 304(b)(5)(A), and is also authorized by the Bureau's authority pursuant to HMDA section 304(b)(5)(D) to require such other information as the Bureau may require, and by the Bureau's authority pursuant to HMDA section 305(a) to provide for adjustments and exceptions. For the reasons given above, final § 1003.4(a)(17) is necessary and proper to effectuate the purposes of and facilitate compliance with HMDA, because it will help identify possible discriminatory lending patterns and help determine whether financial institutions are serving the housing needs of their communities, and because it will significantly reduce burden for reporting financial institutions. Accordingly, where total loan costs are available, final § 1003.4(a)(17) requires financial institutions to report them. However, as explained above, where total loan costs are not available, total points and fees, as defined in § 1003.4(a)(17)(ii), will provide useful information that would not otherwise be available.

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Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[321] Pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau proposed to require financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total origination charges associated with the covered loan. Origination charges are those costs designated ''borrower-paid'' on Line A of the Closing Cost Details page of the current Closing Disclosure, as provided for in Regulation Z § 1026.38(f)(1). Proposed § 1003.4(a)(18) would have applied to closed-end covered loans and purchases of such loans, but not to applications, open-end lines of credit, reverse mortgages, or commercial-purpose loans. For the reasons provided below, the Bureau is adopting § 1003.4(a)(18) as proposed, with additional clarifying commentary.

Industry commenters generally opposed the adoption of total origination charges. Several industry commenters believed that the total amount of borrower-paid origination charges provided little value, for various reasons. Two industry commenters asserted that the value of origination charges was minimal because they were influenced by factors outside of the financial institution's control, such as the borrower's decisionmaking. Many industry commenters raised similar objections to the proposed pricing data in general. For example, one industry commenter pointed out that the pricing data were incomplete because it omitted additional information about the borrower's overall relationship with the financial institution, such as the borrower's loan payment history or deposit balances. Therefore, these commenters argued, the pricing data points, including borrower-paid origination charges, would mislead users.

[319] 12 U.S.C. 2803(b)(5)(A).

[320] H. Rept. 111–702 at 191 (2011) (finding that more specific loan pricing information would ''provide more transparency on underwriting practices and patterns in mortgage lending and help improve the oversight and enforcement of fair lending laws.'').

[321] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

Despite the presence of other variables that influence loan pricing, information about origination charges offers analytical value. First, the final rule will capture several factors about which commenters were concerned, such as a borrower's decision to trade a higher interest rate for lower closing costs. To the extent that financial institutions lack the ability to unilaterally determine every item of borrower-paid origination charges, the control they exercise is high relative to many of the other elements of the Closing Disclosure, such as taxes and other government fees, prepaids, or the initial escrow payment at closing. Moreover, as stated above, the Bureau believes that the final rule need not provide an exhaustive representation of every factor that might conceivably affect loan pricing in order to benefit users. The final rule's pricing data represents a marked improvement over the existing regulation, and these benefits would be lost if the Bureau were to eliminate any data point that might be influenced by the complexity of the pricing process.

Other industry commenters pointed out that proposed § 1003.4(a)(18) omitted certain charges, such as appraisal fees and items paid by the seller. However, § 1003.4(a)(18) is intended to capture the origination charges paid to the financial institution by the borrower; it is not intended to measure the total cost of the transaction. The Bureau is also providing for reporting of total loan costs in final § 1003.4(a)(17), which will provide some of the information about the upfront cost of credit that commenters believed was missing from § 1003.4(a)(18), such as costs associated with appraisal and settlement services. Regarding origination charges paid by the seller, as with total loan costs, seller-paid origination charges would appear on the Closing Disclosure if the seller were legally obligated to pay for such costs.[322] However, only the sum of borrower-paid origination charges are disclosed on the current Closing Disclosure. Incorporating seller-paid origination charges would increase burden because financial institutions could no longer simply report the amount calculated under Regulation Z.

Several industry commenters argued that proposed § 1003.4(a)(18) was duplicative because the Bureau had also proposed to require reporting of the total points and fees in § 1003.4(a)(17). These commenters stated that origination charges were included in total points and fees, and that, in many cases, the origination charges would be identical to the total points and fees. Although final § 1003.4(a)(17) requires reporting of the total loan costs rather than the total points and fees, as defined in proposed § 1003.4(a)(17), the two data points overlap somewhat. However, total loan costs and borrower-paid origination charges differ in important respects. Total loan costs include many additional costs that are excluded from borrower-paid origination charges, such as charges for third-party settlement services. In contrast, total origination charges represent the costs that financial institutions themselves are directly imposing on borrowers. Furthermore, a user could take the difference between total loan costs and total origination charges as an approximate measure of total third-party charges. Therefore, final § 1003.4(a)(17) and final § 1003.4(a)(18) are necessary to enable users to gain a more precise understanding of the costs associated with a mortgage loan.

Several other industry commenters argued that the total amount of borrower-paid origination charges was too burdensome to report. As mentioned above, the Bureau has aligned § 1003.4(a)(18) to Regulation Z and to the Closing Disclosure in order to reduce burden. As with all pricing data points aligned to the Closing Disclosure, the calculation of origination charges will be required only for covered loans for which a Closing Disclosure is required pursuant to Regulation Z § 1026.19(f). Loans excluded from Regulation Z § 1026.19(f), such as open-end lines of credit, reverse mortgages, and commercial loans, are not subject to this provision. Therefore, the burden of reporting under § 1003.4(a)(18) is limited to loans for which financial institutions would already have to calculate the total loan costs in order to disclose them to consumers. This alignment was supported by two industry commenters. Because using the definition of origination charges found in Regulation Z reduces burden while preserving the utility of the data, the Bureau is adopting this definition in the final rule. These exclusions are stated in final comment 4(a)(18)–1, which clarifies the scope of the reporting requirement.

As stated in the proposal, the total amount of borrower-paid origination charges provides a relatively focused measure of the charges imposed on the borrower by the financial institution for originating and extending credit. Furthermore, separate identification of borrower-paid origination charges in addition to total discount points and lender credits facilitates understanding of loan pricing because charges are often interchangeable and may be spread across different elements of loan pricing. The proposed pricing data points, including total origination charges, will help users of HMDA data determine whether different borrowers are receiving fair pricing and develop a better understanding of the ability of borrowers in certain communities to access credit. Therefore, the Bureau is adopting § 1003.4(a)(18) generally as proposed.

In response to the Bureau's solicitation of feedback, one consumer advocate urged the Bureau to require the amount listed as the ''total closing costs'' on Line J of the current Closing Disclosure in addition to or instead of the total origination charges. The commenter stated that origination charges represent a small part of total costs and that financial institutions exert some control over other costs through affiliated business arrangements. In contrast, one industry commenter opposed requiring total closing costs because the commenter believed that the number of factors incorporated into the total closing costs made meaningful comparisons among borrowers impossible. The Bureau acknowledges that total closing costs would provide important information about the costs required for consumers to close on a loan, but is not adopting a new data point for total closing costs. As described above, the Bureau is adopting § 1003.4(a)(17), which requires reporting the total loan costs associated with the covered loan. Final § 1003.4(a)(17) addresses many of the concerns this commenter raised regarding a more inclusive, consistent measure of loan costs, and also includes the upfront cost associated with many third-party settlement services. Furthermore, total closing costs, as disclosed pursuant to Regulation Z § 1026.38(h)(1), include many costs unrelated to the charges imposed by financial institutions for extending credit, such as taxes and other government fees. The Bureau believes that many of these costs can be more accurately estimated by users than the total loan costs, because they will be largely determined by the jurisdiction in which the loan was originated. Total origination charges and total loan costs also bear a closer relationship to the lending practices of financial institutions than total closing costs, and therefore better advance the purposes of HMDA.

For the reasons provided above, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is adopting

[322] *See* 12 CFR 1026.19(f)(1)(i).

§ 1003.4(a)(18) as proposed. For the reasons given above, data about total origination charges will assist public officials and members of the public in determining whether financial institutions are serving the housing needs of their communities and in identifying potentially discriminatory lending patterns. Final § 1003.4(a)(18) requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, as disclosed pursuant to § 1026.38(f)(1). These charges are the total costs designated ''borrower-paid'' on Line A of the Closing Cost Details page of the current Closing Disclosure.

The Bureau is also adopting several new comments. Final comment 4(a)(18)–1 clarifies the scope of the reporting requirement. Final comment 4(a)(18)–2 explains that purchased covered loans are not subject to this reporting requirement if the application was received by the selling entity prior to the effective date of Regulation Z § 1026.19(f). Final comment 4(a)(18)–3 provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of total origination charges.

4(a)(19)

Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[323] Pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau proposed to require financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total discount points paid by the borrower. Discount points are points paid to the creditor to reduce the interest rate, and are listed on Line A.01 of the Closing Cost Details page of the current Closing Disclosure, as described in Regulation Z § 1026.37(f)(1)(i). Proposed § 1003.4(a)(19) would have applied to closed-end covered loans and purchases of such loans, but not to applications, open-end lines of credit, reverse mortgages, or commercial-purpose loans. For the reasons provided below, the Bureau is adopting § 1003.4(a)(19) generally as proposed, with minor technical modifications and new commentary for increased clarity.

Industry commenters generally opposed the requirement to report discount points. Some industry commenters believed that reporting the total discount points was unnecessary or duplicative. Several of these commenters pointed out that the proposal also required financial institutions to report the total points and fees, while other commenters stated that discount points were only applicable to a limited class of loans sold into the secondary market. One industry commenter believed that rate spread and total points and fees could be used to reveal potential unlawful discrimination.

Although discount points are included in both total loan costs and total origination charges, these data points are not substitutes for each other. As explained above, total loan costs and total origination charges represent different elements of loan cost. Discount points are also different than the other loan costs because they represent charges directly related to reductions in the interest rate and are necessary to understand the tradeoffs between rates and points. Other measures of pricing, such as rate spread and total loan costs, can be useful for comparing borrowers, but separate reporting of discount points will improve analysis of the value borrowers are receiving for paying discount points. Finally, even if discount points are not present in every loan, studies of loan costs and public comments received before and after the proposal suggest that discount points are an important element of loan pricing.[324]

Other industry commenters opposed reporting discount points because they believed that doing so would distort the data or potentially mislead users. One industry commenter noted that the absence of information about lender credits would make comparisons between loans with and without lender credits misleading. Other industry commenters argued that comparisons between borrowers were difficult or impossible because of market fluctuations, differences in product type, and borrower decisionmaking.

In response to these comments, the Bureau is adding a requirement for financial institutions to report lender credits. As explained above, however, even though HMDA data are not exhaustive, the data still provide extremely valuable information for the public and public officials that fulfills HMDA's purposes. Regarding the influence of other variables, the final rule includes several data points that will allow users to control for several of the factors mentioned by commenters, including location and product type. Indeed, not requiring reporting of discount points might also mislead users by limiting their ability to explain the lower rates received by borrowers who paid discount points.

Several industry commenters argued that the benefit of proposed § 1003.4(a)(19) was unclear and questioned whether there was any evidence of discrimination against borrowers through discount points. As stated in the proposal, reporting discount points benefits users of HMDA data by enabling them to develop a more detailed understanding of loan pricing. This improved information allows for better analyses regarding the value that borrowers receive in exchange for discount points, and determinations of whether similarly situated borrowers are receiving similar value. Existing studies of loan costs and feedback received prior to the proposal suggested that discount points were a sufficiently important element of loan pricing to justify their inclusion in HMDA.[325]

Finally, one industry commenter believed that reporting discount points was too burdensome because the definition was uncertain. To minimize any burden associated with reporting discount points, the Bureau is adopting a definition of discount points that aligns to Regulation Z. Loans excluded from Regulation Z § 1026.19(f), such as open-end lines of credit, reverse mortgages, and commercial loans, are not subject to final § 1003.4(a)(19). Therefore, the burden of reporting is limited to loans for which financial institutions would already have to know the amount of discount points in order to disclose it to consumers. These exclusions are stated in final comment 4(a)(19)–1, which clarifies the scope of the reporting requirement. This alignment was supported by one industry commenter. The TILA–RESPA integrated disclosure forms, including the Closing Disclosure, are the subject of considerable outreach and guidance from the Bureau during the implementation process. As financial institutions become familiar with these

[323] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

[324] *See, e.g.,* 79 FR 51731, 51788–89 (Aug. 29, 2014) (describing feedback received prior to the proposal); Susan E. Woodward, *A Study of Closing Costs for FHA Mortgages,* at 60–69 (2008) (report prepared for the U.S. Dep't. of Hous. and Urban Dev., Office of Policy Dev. and Research) (discussing problems with discount points on FHA loans); David Nickerson & Marsha Courchane, *Discrimination Resulting from Overage Practices,* 11 J. of Fin. Servs. Research 133 (1997).

[325] *See, e.g.,* 79 FR 51731, 51788–89 (Aug. 29, 2014) (describing feedback received prior to the proposal); Susan E. Woodward, *A Study of Closing Costs for FHA Mortgages,* at 60–69 (2008) (report prepared for the U.S. Dep't. of Hous. and Urban Dev., Office of Policy Dev. and Research) (discussing problems with discount points on FHA loans); David Nickerson & Marsha Courchane, *Discrimination Resulting from Overage Practices,* 11 J. of Fin. Servs. Research 133 (1997).

forms, the burden of reporting should decrease.

For the reasons provided above, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is adopting § 1003.4(a)(19) generally as proposed, with minor technical modifications. These technical modifications clarify that, although discount points are described more clearly in Regulation Z § 1026.37(f)(1)(i), financial institutions should report the amount found on the Closing Disclosure, as disclosed pursuant to Regulation Z § 1026.38(f)(1). For the reasons given above, data about discount points will assist public officials and members of the public in determining whether financial institutions are serving the housing needs of their communities and in identifying potentially discriminatory lending patterns. Final § 1003.4(a)(19) requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the points paid to the creditor to reduce the interest rate, expressed in dollars, as described in Regulation Z, 12 CFR 1026.37(f)(1)(i), and disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1). For covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the discount points that financial institutions would report are those listed on Line A.01 of the Closing Cost Details page of the current Closing Disclosure.

The Bureau is also adopting several new comments. Final comment 4(a)(19)–1 clarifies the scope of the reporting requirement. Final comment 4(a)(19)–2 explains that purchased covered loans are not subject to this reporting requirement if the application was received by the selling entity prior to the effective date of Regulation Z § 1026.19(f). Final comment 4(a)(19)–3 provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of discount points.

4(a)(20)

Proposed 4(a)(20)

Section 304(b) of HMDA authorizes the disclosure of such other information as the Bureau may require.[326] Pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau proposed to require financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), other than purchased covered loans, the risk-adjusted, pre-discounted interest rate associated with a covered loan. The risk-adjusted, pre-discounted interest rate (RPIR) is the rate that the borrower would have received in the absence of any discount points or rebates and is the same base rate from which a financial institution would exclude ''bona fide discount points'' from the points-and-fees total used to determine qualified mortgage and high-cost mortgage status under Regulation Z. Proposed § 1003.4(a)(20) would have applied to closed-end covered loans, but not to applications or purchased covered loans, or open-end lines of credit, reverse mortgages, or commercial-purpose loans. For the reasons provided below, the Bureau is not finalizing proposed § 1003.4(a)(20).

Most consumer advocates expressed support for the proposed pricing data points collectively, but few commented specifically on the RPIR. One commenter generally stated that the RPIR would be helpful for fair lending analysis. Another consumer advocate believed that, combined with the other proposed data points, the RPIR would better enable users to understand pricing disparities among groups of consumers. This consumer advocate further urged the Bureau to expand § 1003.4(a)(20) to cover home-equity lines of credit because doing so would improve the ability of users to compare pricing across loan types.

The Bureau agrees with commenters that the concept of a risk-adjusted, pre-discounted interest rate would have value for fair lending purposes, provided that such a rate was consistently calculated. However, public comments and additional outreach have revealed that the rate proposed to be reported under § 1003.4(a)(20) is less valuable and more unclear than the Bureau initially believed. Several industry commenters cited definitional issues surrounding proposed § 1003.4(a)(20). For example, one commenter noted that a single loan may have multiple rates available to the consumer that would satisfy the description of the RPIR. Another commenter stated that the concept of an RPIR existed only in the realm of informal guidance provided by the Bureau under Regulation Z. Similar feedback was provided by many of the vendors and financial institutions that participated in additional outreach conducted by the Bureau after the proposal's comment period closed. These participants expressed different understandings of the rate that would be required by proposed § 1003.4(a)(20). For example, two participants noted that multiple rates could potentially satisfy the requirements of the RPIR, and that the discretion of a financial institution was required to select a rate that would actually function as the pre-discounted rate, if applicable, for Regulation Z purposes. Other participants cited lack of definitional clarity as a factor that would add significant burden to the proposed reporting requirement.

Additionally, several industry commenters questioned the benefit that the RPIR would provide for fair lending purposes. For example, one commenter doubted that the RPIR would produce any fair lending insights beyond those made possible by the current pricing data. As stated in the proposal, the potential value of the RPIR comes from its explanatory power. Pricing outcomes are determined by many factors, including rate-sheet inputs, loan-level pricing adjustments, other discretionary pricing adjustments, and consumer decisionmaking. The RPIR would reflect many of the pricing adjustments for which users would have to control in order to determine whether pricing disparities were explained by legitimate business considerations. Therefore, analyzing the changes to loan pricing that occur after a financial institution has determined the RPIR may provide strong evidence of potential impermissible discrimination with a reduced need to control for multiple legitimate factors that influence loan pricing.

However, the Bureau now believes that the RPIR may not provide sufficient value to justify the burden associated with collecting and reporting it. The rate described in proposed § 1003.4(a)(20) is the base rate to which a financial institution would apply any reduction obtained by the payment of discount points in determining whether those points may be excluded as ''bona fide discount points'' from points and fees pursuant to Regulation Z § 1026.32(b). This rate was originally designed to ensure that discount points excluded from the points-and-fees coverage tests actually produced an appropriate reduction in the borrower's interest rate. The rate was not intended to isolate pricing adjustments necessary to facilitate fair lending analysis. Therefore, the Bureau believes that the rate is less beneficial for fair lending purposes than it initially thought. After considering the function of the rate and the burden associated with reporting it, the Bureau has decided not to finalize proposed § 1003.4(a)(20).

As part of the additional outreach, the Bureau also sought information about two other measures of loan pricing that might have greater fair lending benefit than the proposed RPIR. These measures are the ''post-LLPA rate'' and the ''discretionary adjustment.'' The

[326] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

post-LLPA rate is the interest rate that reflects all the transaction-specific, nondiscretionary pricing adjustments dictated by the financial institution's standard loan pricing policy. The discretionary adjustment is any alteration by the financial institution of the interest rate or points made for any reason other than the application of the standard loan pricing policy. However, feedback received through the additional outreach process suggested that these measures would be more burdensome to report. For example, they may be calculated and stored less commonly than the RPIR, and neither currently possesses a definition in either existing regulation or industry custom. Therefore, at this time, the Bureau has not identified a suitable alternative base rate that it could substitute for the RPIR proposed in § 1003.4(a)(20).

For the reasons provided above, the Bureau is not finalizing proposed § 1003.4(a)(20).

Final 4(a)(20)

Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[327] In using its discretionary authority to propose to require financial institutions to report the total discount points paid by the consumer, the Bureau also invited comment on ''whether to include any lender credits, premiums, or rebates in the measure of discount points.'' [328] For the reasons provided below, the Bureau is adopting new § 1003.4(a)(20), which requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total amount of lender credits, as disclosed pursuant to Regulation Z § 1026.38(h)(3). Lender credits are amounts provided to the borrower to offset closing costs and are disclosed under Line J of the Closing Cost Details page of the current Closing Disclosure. Final § 1003.4(a)(20) applies to closed-end covered loans and purchases of such loans, but not to applications, open-end lines of credit, reverse mortgages, or commercial-purpose loans.

The Bureau received several comments in response to its solicitation for feedback regarding lender credits. Some industry commenters requested clarification regarding whether such credits would be included within any of the proposed data points. For example, two commenters asked how offsetting credits associated with an interest rate would be reported, if at all. One industry commenter believed that information regarding lender credits would provide no value to HMDA users. However, other comments suggested that data on lender credits would be valuable even though the commenters did not advocate for reporting of these data. For example, one commenter explained that without some representation of lender credits, the prices of loans with such offsetting credits would appear artificially high.

The Bureau believes that lender credits are a basic element of the cost of the loan that should be represented in the HMDA data. Financial institutions often offer borrowers a credit or rebate to offset some or all of the closing costs associated with a loan in return for accepting a higher interest rate. These credits reflect trade-offs similar to those that borrowers make between discount points and the interest rate, and are generally displayed as negative points on the rate sheet. As commenters have pointed out, without accounting for these credits, users of HMDA data would be unable to determine that loans with credits or rebates were not higher priced than similar loans without such credits. As noted above, the final rule cannot provide for reporting of every factor that might conceivably influence loan pricing. However, the Bureau finds that lender credits should be included because they are sufficiently important to understanding the price of a loan. Although the amount of lender credits disclosed under Regulation Z § 1026.38(h)(3) may also include any refunds provided for amounts that exceed the limitations on increases in closing costs, the Bureau believes that an imperfect measure of lender credits is substantially better than no measure at all.[329] Furthermore, removing such refunds to obtain a pure measure of lender credits would increase burden by forcing lenders to perform a new calculation that they would not otherwise perform under any existing regulation.

Two industry commenters opposed reporting lender credits because they would be burdensome to report. However, the Bureau is adopting a definition of lender credits that aligns to Regulation Z § 1026.38(h)(3) and is applying the final reporting requirement only to covered loans for which a Closing Disclosure is required. Loans excluded from Regulation Z § 1026.19(f), such as open-end lines of credit, reverse mortgages, and commercial loans, are not subject to final § 1003.4(a)(20). Therefore, the burden of reporting is limited to loans for which financial institutions would already have to disclose the total amount of lender credits. These exclusions are stated in final comment 4(a)(20)–1, which clarifies the scope of the reporting requirement.

For the reasons provided above, pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau is adopting new § 1003.4(a)(20), which requires financial institutions to report, for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f), the total amount of lender credits, as disclosed pursuant to Regulation Z § 1026.38(h)(3). The total amount of lender credits appears under Line J of the Closing Cost Details page of the current Closing Disclosure. For the reasons given above, data about lender credits will assist public officials and members of the public in determining whether financial institutions are serving the housing needs of their communities and in identifying potentially discriminatory lending patterns.

The Bureau is also adopting several comments. Final comment 4(a)(20)–1 clarifies the scope of the reporting requirement. Final comment 4(a)(20)–2 explains that purchased covered loans are not subject to this reporting requirement if the application was received by the selling entity prior to the effective date of Regulation Z § 1026.19(f). Final comment 4(a)(20)–3 provides guidance in situations where a financial institution has issued a revised Closing Disclosure with a new amount of lender credits.

4(a)(21)

Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[330] Pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau proposed to require financial institutions to report the interest rate that is or would be applicable to the covered loan or application at closing or account opening. Proposed comment 4(a)(21)–1 explained the interest rate that financial institutions should report for covered loans subject to certain disclosure requirements in Regulation Z. For the reasons provided below, the Bureau is generally adopting § 1003.4(a)(21) as proposed, with minor modifications and the addition of commentary clarifying the reporting obligations for applications and for adjustable-rate transactions for which

[327] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

[328] *See* 79 FR 51731, 51789 (Aug. 29, 2014).

[329] The lender credits disclosed pursuant to Regulation Z § 1026.38(h)(3) would also exclude any credits attributable to specific loan costs listed in the Closing Disclosure. *See* 12 CFR 1026.19(f), comment 38(h)(3)–1.

[330] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

the interest rate is unknown at the time final action is taken.

Consumer groups supported the proposed pricing data points, including the interest rate. These commenters stated that such information would help identify potentially unlawful price discrimination and better understand the type and terms of credit offered to different communities. For example, one commenter noted that the interest rate would be particularly valuable for analyzing the impact of discount points. Another commenter stated that the interest rate was necessary to study the terms of the loan. Finally, other consumer advocate commenters noted that the interest rate, when combined with the other pricing variables, would enable a more precise understanding of the elements of loan pricing.

Industry commenters generally opposed requiring financial institutions to report the interest rate. Some industry commenters argued that the interest rate had little value or relevance, and one industry commenter disagreed that facilitating comparisons among borrowers was sufficient to justify the reporting requirement. The value of information regarding the interest rate, however, comes not only from comparing the interest rates received by borrowers but from the ability to better understand the relationship between the interest rate and discount points, origination charges, and lender credits. This more detailed understanding will better facilitate identification of potentially discriminatory lending patterns and provide a more complete picture of the credit available to particular communities.

Several other industry commenters argued that the interest rate was an unnecessary data point. Most of these commenters pointed out that the rate spread was already reported and would enable some analysis of loan pricing. One industry commenter suggested that the annual percentage rate be reported instead of the interest rate. However, one commenter believed that the APR was often calculated inaccurately and therefore supported reporting of the interest rate.

Although the rate spread and the interest rate are related, they are not equivalent measures of loan pricing. As explained in the proposal, the APR is a measure of the cost of credit, including both interest and certain fees, expressed as a yearly rate, while the interest rate is the cost of the loan expressed as a percentage rate. The interest rate enables users to understand the relationship between the interest rate and discount points, origination charges, and lender credits more directly than the rate spread, because the rate spread does not isolate the interest rate. Second, the rate spread and interest rate data points have substantially different scopes. Unlike rate spread, final § 1003.4(a)(21) applies to both reverse mortgages and commercial loans. Indeed, § 1003.4(a)(21) is one of few pricing data points that applies to such loans.

Other industry commenters stated that information about the interest rate would be misleading. One industry commenter noted that the interest rate was influenced by factors outside of a financial institution's control, such as market fluctuations and borrower decisionmaking. Two industry commenters believed that proposed § 1003.4(a)(21) would encourage financial institutions to provide ''teaser rates'' to create the illusion of lower-priced loans in their HMDA data. Although financial institutions set interest rates based in part on market factors that they may not control, interest rate data are still valuable, along with other data elements, to help further HMDA's purposes, including as a screen for potential fair lending concerns. For example, the final rule provides for reporting information about the date, product type, location, and certain consumer decisions, such as the choice to pay discount points for a lower rate or receive lender credits in exchange for a higher rate. Moreover, eliminating the interest rate might also undermine the utility of other data points. Users would experience more difficulty understanding the discount points and lender credits among borrowers or groups of borrowers. Finally, the final rule will also provide for reporting of the introductory rate period, which should discourage the type of rate manipulation about which commenters were concerned.

One industry commenter believed that reporting the interest rate might allow competitors to gain insight into confidential business information, such as underwriting criteria. This commenter did not explain how a competitor would derive proprietary information regarding its underwriting criteria from the interest rate, and the Bureau is aware of no reliable means of doing so.

Several industry commenters raised concerns over the burden of reporting the interest rate. These commenters pointed out that interest rates fluctuate frequently and may be unavailable for loans that are not originated. Similarly, several commenters requested that the Bureau not require financial institutions to report the interest rate for applications because the rate might be unknown. One commenter asked what rate should be reported for an application for which the rate has not been locked. The Bureau notes that, for many applications, a financial institution may not know the interest rate applicable to the covered loan. However, for applications approved by the financial institution but not accepted by the applicant, the interest rate would typically be available. Accordingly, the Bureau is clarifying that § 1003.4(a)(21) requires a financial institution to report the interest rate only if the application has been approved by the financial institution but not accepted by the borrower, or if the financial institution reports the loan as originated. For all other applications or preapprovals, such as applications that have been denied or withdrawn, or files closed for incompleteness, a financial institution reports that no interest rate was applicable. The Bureau is adopting final comment 4(a)(21)–2 to clarify the reporting obligations in the case of applications. This comment removes the burden of attempting to determine the interest rate where the rate is truly unavailable while preserving data utility regarding applications by providing for reporting of the rate where the rate is available. For applications that have been approved but not accepted for which the rate has not been locked, financial institutions would report the rate applicable at the time the application was approved. The Bureau is also adopting comment 4(a)(21)–3, which states that, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate. For purposes of § 1003.4(a)(21), the fully-indexed rate is the index value and margin at the time that the application was approved, or, for covered loans, at closing or account opening. This comment mirrors the approach taken by comment 4(a)(21)–1, which clarifies the interest rate to be reported for loans subject to the Bureau's TILA–RESPA Integrated Disclosure Rule.

Several industry commenters also requested that the Bureau exclude commercial loans, including multifamily mortgage loans, from the scope of § 1003.4(a)(21). Commercial loans, these commenters explained, typically have interest rates that are variable and based on different indices than consumer loans. Similarly, one industry commenter noted that the interest rates for multifamily mortgage loans were based on a variety of factors that differed among multifamily loans.

Regarding variable interest rates, as explained above, the Bureau is adopting comment 4(a)(21)–3, which provides that, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate based on the index applicable to the covered loan or application.

Regarding loan comparisons, the adoption of a commercial-purpose flag in the final rule will enable HMDA data users to identify these loans and avoid potentially misleading comparisons. Information about multifamily housing continues to be an important component of the HMDA data. Information about the conditions of financing for multifamily dwellings may help public officials in distributing public-sector investment so as to attract private investment to areas where it is needed. Therefore, the Bureau is not excluding such loans from § 1003.4(a)(21).

For the reasons provided above, pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau is adopting § 1003.4(a)(21) generally as proposed, with minor modifications and additional clarifying commentary. For the reasons given above, data about the interest rate will assist public officials and members of the public in determining whether financial institutions are serving the housing needs of their communities and in identifying potentially discriminatory lending patterns. The Bureau is adopting commentary identifying the interest rate that should be reported for covered loans subject to the disclosure requirements of Regulation Z § 1026.19(e) or (f). The commentary also explains that, for applications, final § 1003.4(a)(21) requires a financial institution to report the interest rate only for applications that have been approved by the financial institution but not accepted by the borrower. Finally, the Bureau is adopting commentary clarifying the interest rate to be reported for adjustable-rate covered loans or applications for which the initial interest rate is unknown. Final § 1003.4(a)(21) applies to closed-end covered loans, open-end lines of credit, reverse mortgages, and commercial-purpose loans, as well as to purchases of such loans, and applications that have been approved by the lender but not accepted by the borrower.

4(a)(22)

Section 304(b) of HMDA [331] requires reporting of the term in months of any prepayment penalty or other fee or charge payable upon repayment of some portion of principal or the entire principal in advance of scheduled payments.[332] The Bureau proposed to implement this provision through proposed § 1003.4(a)(22), which required financial institutions to report the term in months of any prepayment penalty, as defined in Regulation Z § 1026.32(b)(6)(i) or (ii), as applicable. Prepayment penalties are charges imposed on borrowers for paying all or part of the transaction's principal before the date on which the principal is due. Proposed § 1003.4(a)(22) would have applied to applications for, and originations of, closed-end loans, open-end lines of credit, reverse mortgages, and commercial-purpose loans, but not to purchases of such loans. For the reasons provided below, the Bureau is adopting § 1003.4(a)(22) generally as proposed, with clarifying commentary, but is limiting its scope to certain covered loans or applications subject to Regulation Z, 12 CFR part 1026. The revised scope of the reporting requirement excludes purchased covered loans, as well as reverse mortgages and loans or lines of credit made primarily for business or commercial purposes.

The Bureau received few comments supporting or opposing proposed § 1003.4(a)(22). Two industry commenters asserted that reporting information about prepayment penalties was unnecessary because regulatory scrutiny and the requirements of secondary market programs have diminished their prevalence. On the other hand, several consumer advocates supported the improved pricing data, including reporting of the prepayment penalty. One consumer advocate was particularly supportive of proposed § 1003.4(a)(22) because of the importance of understanding whether certain communities were receiving loans with problematic features.

The final rule retains the requirement to report data about prepayment penalties, consistent with the Dodd-Frank Act amendments to HMDA. In the lead-up to the financial crisis, prepayment penalties were frequently cited as a risky feature for consumers with subprime loans. Although prepayment penalties may be less prevalent than they were in the years preceding the financial crisis, their use may increase in the future. Prepayment penalty data will allow for the identification of any potential increase in prepayment penalties when considering how institutions are meeting the housing needs of their communities, and when looking for any potentially discriminatory lending practices.

Most industry commenters requested certain clarifications or revisions to the scope of the reporting requirement. One industry commenter requested that the final rule not require reporting of the prepayment penalty for applications that do not result in originations. The Bureau is not adopting this suggestion. Both loans and applications for loans with prepayment penalties will provide valuable data for HMDA's purposes, and commenters have not suggested that the prepayment penalty term is more burdensome to determine for an application than for an originated loan. If the loan for which a consumer applied featured a prepayment penalty, the financial institution would report the term of that prepayment penalty. Similarly, if the loan for which the consumer applied featured no prepayment penalty, the financial institution would report that the reporting requirement was not applicable to the transaction. The Bureau has reflected these requirements in final comment 4(a)(22)–2. Two other industry commenters requested clarification regarding certain conditionally-waived charges. Final § 1003.4(a)(22) defines prepayment penalty with reference to Regulation Z § 1026.32(b)(6)(i) or (ii), as applicable. The commentary to § 1026.32(b)(6) discusses waived, bona fide third-party charges imposed under certain conditions and, as explained in final comment 4(a)(22)–2, may be relied on for purposes of § 1003.4(a)(22).

Two industry commenters asked the Bureau to exclude commercial loans, including multifamily loans, from the prepayment penalty reporting requirement. These commenters pointed out that prepayment penalties serve different purposes in commercial lending. One commenter explained that multifamily mortgage loans featured various forms of prepayment protection, such as lock-out features, yield maintenance, or prepayment premiums that were not contemplated in the definition of prepayment penalty found in Regulation Z § 1026.32(b)(6)(i) and (ii). This commenter urged the Bureau to either limit § 1003.4(a)(22) to consumer loans or to adopt a new definition that was relevant to the commercial and multifamily lending context.

[331] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

[332] 12 U.S.C. 2803(b)(5)(C).

The Bureau understands that commercial loans, particularly multifamily mortgage loans, include forms of prepayment protection which have no analog in the consumer-purpose mortgage context. For example, these loans may feature defeasance, in which the borrower of a multifamily mortgage loan substitutes a new form of collateral, such as bonds or other securities, designed to generate sufficient cash flow to cover future loan payments. In order to capture these complex arrangements, the final rule would have to include a new definition of prepayment penalty. A new definition that is not part of any other existing regulation would likely impose burden on financial institutions. Moreover, consumer mortgage loans with prepayment penalties were most frequently cited as a concern in the lead up to the financial crisis and the Dodd-Frank Act. The Bureau is not aware of similar concerns about commercial loans covered by HMDA. At this time, the Bureau does not believe that applying § 1003.4(a)(22) to commercial loans would provide sufficient benefits to justify the additional burden on financial institutions. Therefore, the Bureau is limiting the scope of final § 1003.4(a)(22) to covered loans or applications subject to Regulation Z, 12 CFR part 1026.

For the reasons provided above, to implement HMDA section 304(b)(5)(C), and pursuant to HMDA section 305(a), the Bureau is adopting § 1003.4(a)(22) generally as proposed, but is modifying the scope of the provision to apply to certain covered loans and applications subject to Regulation Z, 12 CFR part 1026. Final § 1003.4(a)(22) applies to applications for, and originations of, closed-end covered loans and open-end lines of credit, but not reverse mortgages and commercial-purpose loans. To facilitate compliance, the Bureau is excepting covered loans that have been purchased by a financial institution. As the Bureau explained in the proposal, it does not believe that the term of a prepayment penalty would be readily available from the information obtained from the selling entity.[333] The Bureau is also excepting reverse mortgages and commercial-purpose loans, which, as explained above, will facilitate compliance.

Final § 1003.4(a)(22) includes commentary clarifying the reporting obligations of financial institutions in certain situations. Final comment 4(a)(22)–1 clarifies the scope of the reporting requirement. Final comment 4(a)(22)–2 provides guidance for reporting the prepayment penalty for applications and allows financial institutions to rely on the commentary to the relevant sections of Regulation Z.

4(a)(23)

Proposed § 1003.4(a)(23) provided that a financial institution must report the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision (debt-to-income ratio). Proposed § 1003.4(a)(23) applied to covered loans and applications, except for reverse mortgages. The Bureau also proposed new comments 4(a)(23)–1 through –4. Many commenters addressed including the debt-to-income ratio in the HMDA data. Many community advocate commenters expressed support for its inclusion, while many industry commenters raised concerns about reporting the data. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(23) and comments 4(a)(23)–1 through –4 as proposed with technical modifications discussed below. In addition, the Bureau is adopting new comments 4(a)(23)–5 through –7.

Comments

Several consumer advocate commenters expressed strong support for proposed § 1003.4(a)(23). Many noted that the debt-to-income ratio will help identify problematic loans where there may be a need for intervention. One commenter stated that higher ratios correspond with higher default rates and suggested that lenders' acceptance of higher debt-to-income ratios in loans originated in the mid-2000s contributed to the high foreclosure rates after 2005. In addition, commenters stated that the debt-to-income ratio will enable users to identify whether the debt-to-income ratio is a barrier to credit and, if so, which consumers are affected.

A consumer advocate commenter expressed support for collecting the debt-to-income ratio, but noted limitations to its utility because it can be easily manipulated. The commenter explained that the debt-to-income ratio may overstate a borrower's repayment ability because a borrower may repay an open-end line of credit to reduce their debt in order to qualify, but then immediately re-draw the line. In addition, the debt-to-income ratio may understate a borrower's ability to repay because a financial institution may only consider the minimum income to qualify.

Many industry commenters expressed concerns about proposed § 1003.4(a)(23). Many commenters questioned the value of reporting this information. Some noted that the data would be difficult to analyze because the debt-to-income ratio is calculated and weighted differently depending on the loan product, financial institution, and applicant's circumstances. Others stated that the data would not be valuable for different reasons, including that the debt-to-income ratio is not calculated for all loans and that the debt-to-income ratio only factors into denial, and not into pricing decisions. Commenters also expressed concern that the information may be misunderstood because the debt-to-income ratio is one of many factors in an underwriting decision and conveys complex information. Other commenters objected to including this requirement because it is not expressly required by the Dodd-Frank amendments to HMDA. A few commenters asserted that collecting the debt-to-income ratio would not support HMDA's purposes. Others suggested that collecting the debt-to-income ratio was duplicative of other information included in the proposal, including denial reasons.

In addition to general concerns about the proposed requirement, some commenters stated that reporting the debt-to-income ratio would be too burdensome for financial institutions. On the other hand, some industry commenters noted that the burden for reporting proposed § 1003.4(a)(23) would be low because it requires reporting of the debt-to-income ratio relied on by the financial institution in making the credit decision instead of prescribing a specific calculation.

A few industry commenters stated that they supported reporting the debt-to-income ratio relied on in making the credit decision, rather than requiring financial institutions to report a calculation prescribed by the Bureau. Other commenters urged the Bureau to require reporting of a specific debt-to-income ratio to increase the utility of the data.

The Bureau concludes that including the debt-to-income ratio in the HMDA data will provide many benefits and further HMDA's purposes. The debt-to-income ratio will help identify potential patterns of discrimination. The Bureau understands that the debt-to-income ratio is only one factor in underwriting. Nonetheless, the debt-to-income ratio provides important information about the likelihood of default and about access to credit. Reporting debt-to-income information supplements the denial reason field in which financial institutions may indicate whether an application was denied due to the debt-to-income ratio. In addition to information about whether a loan was

[333] 79 FR 51731 at 51791–92.

denied due to the debt-to-income ratio, reporting the debt-to-income ratio will illuminate potential disparate treatment of similarly situated applicants. This information will help to better identify discriminatory practices, better understand whether lenders are meeting their obligations to serve the needs of the communities in which they operate, and, potentially, better target programs and investments to vulnerable borrowers.

Requiring the financial institution to report the debt-to-income ratio relied on in making the credit decision would provide these benefits even though, as noted by industry commenters, the debt-to-income ratio is calculated differently depending on the loan product and lender. A prescribed debt-to-income calculation for HMDA purposes may allow for better comparison of debt-to-income information across the data. However, a prescribed calculation would significantly increase the burden associated with reporting the debt-to-income ratio. Therefore, the final rule, like the proposal, does not require a prescribed debt-to-income ratio calculation for HMDA purposes, and, instead, requires financial institutions to report the debt-to-income ratio relied on in making the credit decision.

Some consumer advocate commenters urged the Bureau to collect additional information related to the mortgage payment-to-income ratio (front-end debt-to-income ratio). The front-end debt-to-income ratio differs from the information requested by proposed § 1003.4(a)(23), which is commonly referred to as the back-end debt-to-income ratio, in that it, unlike the back-end debt-to-income ratio, does not include debts other than the mortgage debt in the debt-to-income ratio. As a result, the front-end debt-to-income ratio is a less complete measure of a borrower's ability to repay a loan and, accordingly, is a less important factor in underwriting decisions. In addition, using the reported income, discussed above in the section-by-section analysis of § 1003.4(a)(10)(iii), and loan amount, discussed above in the section-by-section analysis of § 1003.4(a)(7), it will be possible to calculate that ratio, if desired. For these reasons, the final rule does not require financial institutions to report the front-end debt-to-income ratio.

Several industry commenters also raised concerns about the privacy implications of collecting and disclosing the applicant or borrower's debt-to-income ratio. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of the data. Due to the significant benefits of collecting this information, the Bureau believes it is appropriate to collect the debt-to-income ratio despite the concerns raised by commenters about collecting this information.

Some industry commenters urged the Bureau to exclude certain types of transactions (*e.g.,* applications) or types of financial institutions (*e.g.,* community banks) from the requirement to report the information required by proposed § 1003.4(a)(23). In addition, some commenters believed that the proposal would require a financial institution to calculate a debt-to-income ratio for HMDA reporting purposes even if the financial institution did not calculate or use debt-to-income information in its credit decisions.

Proposed § 1003.4(a)(23) does not require reporting the debt-to-income ratio unless the financial institution has calculated and relied upon a debt-to-income ratio in evaluating an application. As discussed above, the debt-to-income ratio is an important aspect in underwriting and reporting this information will provide an important insight into an institution's credit decision. This information is particularly important when a financial institution denies an application due to the debt-to-income ratio. In addition, as discussed above, a financial institution is not required to report a debt-to-income ratio if it has not calculated the debt-to-income ratio for a particular application. The final rule does not require financial institutions to calculate debt-to-income ratios solely for HMDA reporting purposes. Therefore, the debt-to-income ratio should be reported for applications and originations if the ratio is calculated and relied on by the financial institution in making the credit decision.

Other commenters explained that the debt-to-income information should not be reported for loans related to multifamily properties or loans to a trust because financial institutions do not calculate the debt-to-income ratio in making a credit decision on applications for those types of loans. Commenters explained that financial institutions usually consider the cash flow of the property, such as the debt service coverage ratio, rather than the income of the applicant when evaluating a multifamily loan or loan to a non-natural person. The Bureau understands that this cash flow analysis is different from the debt-to-income ratio. However, some commenters expressed uncertainty about whether financial institutions would be required to report the debt service coverage ratio or other cash flow analysis for loans to non-natural persons or for multifamily properties. To eliminate the confusion, the final rule will not require the financial institution to report the debt-to-income ratio for such loans. New comments 4(a)(23)–5 and –6 explain that a financial institution may report that the requirement does not apply if the applicant and co-applicant, if applicable, are not natural persons and for loans secured by, or proposed to be secured by, multifamily dwellings.

In addition, the Bureau has excluded purchased covered loans from the requirements of § 1003.4(a)(23). The Bureau does not believe that the debt-to-income ratio information is as valuable for purchased covered loans as for applications and originations. The debt-to-income ratio that the originating financial institution relied on in making the credit decision may no longer be accurate because a borrower's debts and incomes may have changed since origination. In addition, the Bureau believes that purchasing financial institutions may face practical challenges in ascertaining the debt-to-income ratio that the originating financial institution relied on in making the credit decision because it may not be evident on the face of the loan documents. In light of the limited value of the data and these practical challenges, the Bureau is excluding purchased covered loans from the requirements in § 1003.4(a)(23). However, as discussed in comments 4(a)–2 through –4, a financial institution that reviews an application for a covered loan, makes a credit decision on that application prior to closing, and purchases the covered loan after closing will report the covered loan as an origination, not a purchase. In that case, the final rule requires the financial institution to report the debt-to-income ratio that it relied on in making the credit decision.

Finally, an industry commenter also asked the Bureau to explain what a financial institution should report if it calculates more than one ratio in making the credit decision. The Bureau is finalizing proposed comment 4(a)(23)–1, which addresses the situation in which more than one ratio is used. If a financial institution calculated an applicant's or borrower's ratio more than one time, the financial institution reports the debt-to-income ratio relied on in making the credit decision.

Final Rule

Having considered the comments received and for the reasons discussed above, pursuant to its authority under

sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is finalizing § 1003.4(a)(23) as proposed with technical modifications. In addition, the Bureau is finalizing proposed comments 4(a)(23)–1 through –4, as proposed, with the clarifying modifications discussed above and other technical modifications. Finally, the Bureau is finalizing new comments 4(a)(23)–5 through –7 to clarify when a financial institution is not required to report the applicant's or borrower's debt-to-income ratio.

In addition, proposed § 1003.4(a)(23) excluded reverse mortgages from the requirement to report the debt-to-income ratio. The Bureau is removing that exclusion from the final rule. The Bureau included that exclusion because it understood that financial institutions historically did not consider income or debt-to-income information when evaluating applications for reverse mortgages. HUD recently changed its guidelines for evaluating reverse mortgages for participation in the Home Equity Conversion Mortgage (HECM) program, which currently accounts for the majority of the reverse mortgage market.[334] These revised guidelines include consideration of some income information.[335] Currently, the revised standards do not contemplate calculation of a debt-to-income ratio. However, it is possible that in the future these guidelines or other underwriting standards applicable to reverse mortgages may include the consideration of a debt-to-income ratio. Therefore, the final rule removes the exclusion for reverse mortgages from § 1003.4(a)(23). The Bureau anticipates that this information will not be reported for most reverse mortgages because an institution is only required to report the debt-to-income ratio if it relies on it in making a credit decision and institutions do not typically rely on a debt-to-income ratio in making a credit decision on a reverse mortgage.

4(a)(24)

Currently, neither HMDA nor Regulation C contains requirements regarding loan-to-value ratio. Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[336] The Bureau proposed § 1003.4(a)(24), which requires financial institutions to report the ratio of the total amount of debt secured by the property to the value of the property. The ratio of total amount of secured debt to the value of the property securing the debt is generally referred to as the combined loan-to-value (CLTV) ratio.

The Bureau proposed two different calculations for CLTV—one calculation for a covered loan that is a home-equity line of credit and another calculation for a covered loan that is not a home-equity line of credit. Specifically, the Bureau proposed § 1003.4(a)(24)(i), which provides that, for a covered loan that is a home-equity line of credit, the CLTV ratio shall be determined by dividing the sum of the unpaid principal balance of the first mortgage, the full amount of any home-equity line of credit (whether drawn or undrawn), and the balance of any other subordinate financing by the property value identified in proposed § 1003.4(a)(28). As to a covered loan that is not a home-equity line of credit, the Bureau proposed § 1003.4(a)(24)(ii), which provides that the CLTV ratio shall be determined by dividing the combined unpaid principal balance amounts of the first and all subordinate mortgages, excluding undrawn home-equity lines of credit amounts, by the property value identified in proposed § 1003.4(a)(28).

In addition, the Bureau proposed instruction 4(a)(24)–1, which directs financial institutions to enter the CLTV ratio applicable to the property to two decimal places, and if the CLTV ratio is a figure with more than two decimal places, directs institutions to truncate the digits beyond two decimal places. The Bureau also proposed instruction 4(a)(24)–2, which provides technical instructions for covered loans in which no combined loan-to-value ratio is calculated.

The Bureau also proposed three comments to clarify this reporting requirement. Proposed comment 4(a)(24)–1 clarifies that, if a financial institution makes a credit decision without calculating the combined loan-to-value ratio, the financial institution complies with § 1003.4(a)(24) by reporting that no combined loan-to-value ratio was calculated in connection with the credit decision. Proposed comment 4(a)(24)–2 describes the CLTV calculation for home-equity lines of credit proposed in § 1003.4(a)(24)(i) and provides illustrative examples. Proposed comment 4(a)(24)–3 describes the CLTV calculation for transactions that are not home-equity lines of credit proposed in § 1003.4(a)(24)(ii) and provides illustrative examples.

The Bureau solicited feedback regarding whether proposed § 1003.4(a)(24) is appropriate generally. Most commenters that provided feedback on proposed § 1003.4(a)(24) supported the Bureau's proposal. For example, one consumer advocate commenter stated that the CLTV ratio provides the most accurate calculation of borrower equity and is therefore most relevant to assess the credit risk of the loan. Another consumer advocate commenter pointed out that CLTV ratio data provides important information regarding both an individual property's leverage and the general level of leverage in specific geographic locations, and noted that areas in which many properties are highly leveraged are especially vulnerable to changes in economic conditions. Another consumer advocate commenter suggested that CLTV ratio data is vital to determining whether particular financial institutions are making loans with high CLTV ratios on a census tract level. Some industry commenters also supported the Bureau's proposal. For example, as with credit score data, one industry commenter stated that for purposes of fair lending analysis, CLTV is crucial to understanding a financial institution's credit and pricing decision and that without such information, inaccurate conclusions may be reached by users of HMDA data.

In contrast, several industry commenters opposed the Bureau's proposal to require reporting of CLTV. For example, some industry commenters stated that the proposed requirement is an unnecessary burden on financial institutions since loan-to-value ratio may be calculated using the Bureau's proposed property value data and the loan amount data that the regulation already requires. These commenters explained that while the proposed CLTV requirement would provide the ratio of the total amount of debt secured by the property to the value of the property, they believe the additional burden placed on financial institutions by this new reporting requirement outweighs any added value to data users.

The Bureau has considered this feedback and determined that CLTV ratio data would improve the HMDA data's usefulness. CLTV ratio is a standard underwriting factor regularly calculated by financial institutions, both for a financial institution's own underwriting purposes and to satisfy investor requirements. For a particular transaction in which a CLTV ratio is not calculated or considered during the underwriting process, the Bureau is adopting a new comment, discussed further below, which permits financial institutions to report that the requirement is not applicable if the

[334] U.S. Dept. of Housing and Urban Dev., Mortgagee Letter 2014–22, *HECM Fin. Assessment and Property Charge Requirements, available at http://portal.hud.gov/hudportal/documents/huddoc?id=14-22ml.pdf.*

[335] *Id.* at 33.

[336] *See* Dodd-Frank Act section 1094(3)(A)(iv).

financial institution did not rely on the CLTV ratio in making the credit decision. The Bureau believes that the CLTV ratio is an important factor both in the determination of whether to extend credit and for the pricing terms upon which credit would be extended. Consequently, the Bureau is adopting proposed § 1003.4(a)(24), modified as discussed further below.

The Bureau has determined to exclude purchased covered loans from the requirements of § 1003.4(a)(24). The Bureau does not believe that the combined-loan-to-value ratio information is as valuable for purchased covered loans as for applications and originations. The combined-loan-to-value ratio that the originating financial institution relied on in making the credit decision may no longer be accurate, because the total amount of debt secured by the property to the value of the property likely has changed since origination. In addition, the Bureau believes that purchasing financial institutions may face practical challenges in ascertaining the combined-loan-to-value ratio that the originating financial institution relied on in making the credit decision because it may not be evident on the face of the loan documents. In light of the limited value of the data and these practical challenges, the Bureau is excluding purchased covered loans from the requirements in § 1003.4(a)(24). However, as discussed in comment 4(a)–3, a financial institution that reviews an application for a covered loan, makes a credit decision on that application prior to closing, and purchases the covered loan after closing will report the covered loan that it purchases as an origination, not a purchase. In that case, the final rule requires the financial institution to report the combined-loan-to-value ratio that it relied on in making the credit decision.

The Bureau solicited feedback regarding whether the proposed alignment to the MISMO data standards for CLTV is appropriate and whether the text of this proposed requirement should be clarified. Consistent with the Small Business Review Panel's recommendation, the Bureau also solicited feedback regarding whether it would be less burdensome for small financial institutions to report the combined loan-to-value relied on in making the credit decision, or if it would be less burdensome to small financial institutions for the Bureau to adopt a specific combined loan-to-value ratio calculation as proposed under § 1003.4(a)(24).

Several commenters did not support the Bureau's proposal to align with the MISMO data standards and require two different CLTV calculations depending on whether or not the transaction is a home-equity line of credit. Both consumer advocates and industry were concerned with the proposed requirement to calculate CLTV ratio one way for home-equity lines of credit but another way for non-home-equity lines of credit. Several commenters did not support the Bureau's proposed CLTV calculations under proposed § 1003.4(a)(24), which requires that the full amount of a home-equity line of credit be included in the CLTV calculation for a covered loan that is a home-equity line of credit, whether it is drawn or not, but that for transactions that are not home-equity lines of credit, only the outstanding amount of any home-equity line of credit should be included. One industry commenter noted that it calculates the CLTV ratio for a covered loan that is not a home-equity line of credit by including the total amount of home-equity lines of credit (and does not exclude ''undrawn'' home-equity lines of credit as required under the Bureau's proposal).

One consumer advocate commenter recommended that the transactions should be treated identically by requiring the full amount be included in the CLTV calculation since the entire amount of a home-equity line of credit available to the borrower constitutes potential leverage of the property in either situation. Similarly, another consumer advocate commenter suggested that loan-to-value calculations involving home-equity lines of credit should always use the full amount of credit available to the borrower because the borrower has access to the full line of credit without any additional underwriting by the financial institution and thus a loan-to-value calculation that ignores the undrawn amount will be unreliable for purposes of analysis. This same commenter stated that the Bureau's desire to align with the MISMO data standards does not justify the adoption of inferior CLTV measurements. Lastly, in order to address the burden that results from requiring different CLTV ratio calculations based on the type of transaction, industry commenters also recommended that the Bureau allow for consistent treatment of outstanding lines of credit, regardless of the loan type being originated.

The Bureau has considered this feedback and acknowledges that CLTV ratio calculations on home-equity lines of credit may vary between financial institutions. The Bureau has determined that having two different methods of calculating CLTV—one calculation for a covered loan that is a home-equity line of credit and another calculation for a covered loan that is not a home-equity line of credit—is unduly burdensome on financial institutions. The Bureau has also determined that it would be less burdensome for financial institutions to report the CLTV relied on in making the credit decision. Consequently, the Bureau will not adopt § 1003.4(a)(28) as proposed. Instead, the Bureau is adopting a modified § 1003.4(a)(28), which requires a financial institution to report the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision.

As discussed in the proposal, the Bureau is generally concerned about the potential burden associated with reporting calculated data fields, such as the CLTV ratio. Some commenters noted that consistency in the rounding method for all relevant HMDA data will lead to more accurate reporting. A few industry commenters stated that the proposal presented a confusing rounding process that is not intuitive and differs depending on the data point being reported. For example, one commenter suggested that rather than the requirement to truncate any digits beyond the first two decimal places, proposed instruction 4(a)(24)–1 should be adjusted to read that a CLTV ratio be rounded up if the third digit behind the decimal is 5 or larger, and rounded down if the digit is 4 or smaller. The commenter stated that current underwriting systems such as Fannie Mae's Desktop Underwriter use this method and that unnecessary errors can be expected if the CLTV instructions are finalized as proposed.

The Bureau acknowledges that the CLTV reporting requirement in proposed instruction 4(a)(24)–1 may have posed some challenges for financial institutions. The Bureau has considered the feedback and believes that the proposed CLTV reporting requirement may be unduly burdensome on financial institutions. Consequently, the Bureau is not adopting the proposed CLTV reporting requirement in the final rule.

The Bureau is adopting a modified § 1003.4(a)(24), which requires reporting of the CLTV that a financial institution relied on in making the credit decision and excludes reporting of CLTV for purchased covered loans. In order to align with the new reporting requirement, the Bureau will not adopt comments 4(a)(24)–1, –2, and –3 as proposed, and adopts new comments 4(a)(24)–1, –2, –3, –4, and –5.

The Bureau is adopting new comment 4(a)(24)–1, which explains that § 1003.4(a)(24) requires a financial institution to report the CLTV ratio relied on in making the credit decision and provides an illustrative example. The example provides that if a financial institution calculated a CLTV ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the CLTV ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the CLTV ratio calculated according to the requirements of the secondary market investor.

The Bureau is adopting new comment 4(a)(24)–2, which explains that a financial institution relies on the total amount of debt secured by the property to the value of the property (CLTV ratio) in making the credit decision if the CLTV ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the CLTV ratio is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the CLTV ratio and complies with § 1003.4(a)(24) by reporting the CLTV ratio, even if the financial institution denies the application because one or more underwriting requirements other than the CLTV ratio are not satisfied.

The Bureau is adopting new comment 4(a)(24)–3, which explains that a financial institution should report that the requirement is not applicable for transactions in which a credit decision was not made and provides illustrative examples. The comment provides that if a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated the CLTV ratio.

The Bureau is adopting new comment 4(a)(24)–4, which explains that a financial institution should report that the requirement is not applicable for transactions in which no CLTV ratio was relied on in making the credit decision. The comment provides that § 1003.4(a)(24) does not require a financial institution to calculate the CLTV ratio, nor does it require a financial institution to rely on a CLTV ratio in making a credit decision. The comment clarifies that if a financial institution makes a credit decision without relying on a CLTV ratio, the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable since no CLTV ratio was relied on in connection with the credit decision.

Lastly, the Bureau is adopting new comment 4(a)(24)–5, which explains that a financial institution complies with § 1003.4(a)(24) by reporting that the reporting requirement is not applicable when the covered loan is a purchased covered loan. The Bureau believes that comments 4(a)(24)–1, –2, –3, –4, and –5 will provide clarity regarding the new reporting requirement adopted in § 1003.4(a)(24) and will facilitate HMDA compliance.

The Bureau believes that requiring financial institutions to collect information regarding CLTV ratios is necessary to carry out HMDA's purposes, such as helping to ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment. CLTV ratios are a significant factor in the underwriting process and provide valuable insight into both the stability of community homeownership and the functioning of the mortgage market. Accordingly, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is adopting § 1003.4(a)(24), which requires, except for purchased covered loans, reporting of the CLTV that a financial institution relied on in making the credit decision.

4(a)(25)

HMDA section 304(b)(6)(D) requires, for loans and completed applications, that financial institutions report the actual or proposed term in months of the mortgage loan.[337] Currently, Regulation C does not require financial institutions to report information regarding the loan's term. The Bureau proposed to implement HMDA section 304(b)(6)(D) by requiring in § 1003.4(a)(25) that financial institutions collect and report data on the number of months until the legal obligation matures for a covered loan or application. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(25) substantially as proposed.

The Bureau solicited feedback on what method of reporting loan term would minimize the burden on small institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA. Several commenters opposed the Bureau's proposal and suggested that reporting the loan term, along with other proposed data points specific to applicant or borrower and property characteristics, could create privacy risks. One commenter stated that it would be difficult to retain borrower and lender privacy in transactions that involve multifamily loans because there are a limited number of transactions in a geographic area. The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of the HMDA data.

One commenter stated that collecting data on the loan term is appropriate for closed-end loans but would create burdensome programming demands if it became a requirement for open-end credit. As the Bureau explained in the proposal, the length of time a borrower has to repay a loan is an important feature for borrowers and creditors. With this information, borrowers are able to determine the amount due with each payment, which could significantly influence their ability to afford the loan. Creditors, on the other hand, can use loan term as a factor in assessing interest rate risk, which in turns, affects loan pricing. The Bureau believes that the benefit of the information that the loan term could provide, including loan terms on open-end lines of credit, justifies the burden because this information could help explain pricing or any other differences that are indiscernible with current HMDA data.

A few commenters suggested that the loan term should be reported consistent with the loan term disclosed under TILA–RESPA, which provides under Regulation Z § 1026.37(a)(8) that the term to maturity should be disclosed in years or months or both.[338] Although consistency with TILA–RESPA might mitigate burden if the creditor disclosing the loan term under TILA–RESPA elects to disclose term to maturity in months instead of years or years plus the remaining months, the Bureau believes that a reasonable interpretation of HMDA section 304(b)(6)(D) is that financial institutions

[337] Dodd-Frank Act section 1094(3)(A)(iv).

[338] *See* 78 FR 79730 (Dec. 31, 2013). The rule is effective on October 3, 2015 and applies to transactions for which the creditor or mortgage broker receives an application on or after that date.

should report the actual or proposed term for a loan or application in months. Another commenter stated that reporting loan term can be confusing on loans with unusual terms, such as those with terms that are not in whole months. Proposed comment 4(a)(25)–2 clarified that for covered loans with non-monthly repayment schedules, the loan term should be in months and not include any fractional months remaining. This guidance, for which the Bureau did not receive any comments, should facilitate compliance for loans with repayment schedules that are measured in units of time other than months.

Several other commenters supported the Bureau's proposal to include the loan term. One commenter that supported the Bureau's proposal stated that it is very useful, particularly given the risk maturity premium for longer term loans. Moreover, researchers would be able to examine whether a concentration of shorter term loans can lead to a more stable housing market.

The Bureau concludes that the information that could be provided by loan terms will help determine whether financial institutions are serving the housing needs of their communities and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately. Accordingly, to implement HMDA section 304(b)(6)(D), the Bureau is adopting § 1003.4(a)(25) substantially as proposed with minor wording changes and is also adopting as proposed comments 4(a)(25)–1 and –2. In addition, the Bureau is adopting a few comments that incorporate material contained in proposed appendix A into the commentary to § 1003.4(a)(25) because of the removal of appendix A as discussed in the section-by-section analysis of appendix A below. These comments 4(a)(25)–3 through 4(a)(25)–5 primarily incorporate proposed appendix A instructions that do not contain any substantive changes from the proposed reporting requirements.

4(a)(26)

HMDA section 304(b)(6)(B) requires the reporting of the actual or proposed term in months of any introductory period after which the rate of interest may change.[339] Currently, Regulation C does not require financial institutions to report information regarding the numbers of months until the first interest rate adjustment. The Bureau proposed to implement HMDA section 304(b)(6)(B) by requiring in § 1003.4(a)(26) that financial institutions collect and report data on the number of months until the first date the interest rate may change after loan origination. The Bureau also proposed that § 1003.4(a)(26) would apply regardless of how the interest rate adjustment is characterized by product type, such as adjustable rate, step rate, or another type of product with a ''teaser'' rate. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(26) generally as proposed.

The Bureau solicited feedback on what method of reporting initial interest rate period would minimize burden on small financial institutions while still meeting the Dodd-Frank Act reporting requirements and purposes of HMDA. Several commenters supported the Bureau's proposal to collect data about introductory terms. One commenter stated that along with other data points, the introductory rate period will enable accurate analyses and a full understanding of the extent of the terms to which residents have access to credit. The Bureau finds these reasons compelling in finalizing § 1003.4(a)(26). As the Bureau explained in the proposal, interest rate variability can be an important feature in affordability. In addition, having information about introductory rates will enable better analyses of loans and applications, which could be used to identify possible discriminatory lending patterns.

One commenter pointed out that the Bureau's proposal to report the number of months until the first date the interest rate may change after origination is a measure different from Regulation Z § 1026.43(e)(2)(iv)(A), which measures the interest rate change from the date the first regular periodic payment is due. This commenter suggested that the measure for the introductory term for HMDA reporting should be consistent with the measure prescribed by Regulation Z § 1026.43(e)(2)(iv)(A), which relates to the underwriting of a qualified mortgage adopted under the Bureau's 2013 ATR Final Rule. Section 1026.43(e)(2)(iv)(A) provides that a qualified mortgage under § 1026.43(e)(2) must be underwritten, taking into account any mortgage-related obligations, using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due. As stated in the Bureau's 2013 ATR Final Rule, the Bureau believes that the approach of requiring creditors to underwrite a loan based on the maximum interest rate that applies during the first five years after the first regular periodic payment due date provides greater protections to consumers and is also consistent with Regulation Z disclosure requirements for interest rates on adjustable-rate amortizing loans.[340] The Bureau, however, believes that a reasonable interpretation of HMDA section 304(b)(6)(B) requires the reporting of the number of months after a loan origination until the first instance of an interest rate changes or for a loan application, the proposed number of months until the first instance of an interest rate change. Accordingly, the Bureau is adopting § 1003.4(a)(26) generally as proposed but is modifying the scope of the provision to include applications. The Bureau is also adopting comments 4(a)(26)–1 and –2 generally as proposed, but with minor modifications for clarification. In addition, because appendix A will be deleted as discussed in the section-by-section analysis of appendix A below, the Bureau is adopting new comments 4(a)(26)–3 and –4 to incorporate instructions in proposed appendix A. New comments 4(a)(26)–3 and –4 to incorporate proposed instructions in appendix A. New comment 4(a)(26)–3 specifies that a financial institution reports that the requirement to report the introductory rate period is not applicable when the transaction involves a fixed rate covered loan or an application for a fixed rate covered loan. Similarly, new comment 4(a)(26)–4 specifies that a financial institution reports that the requirement to report the introductory rate period is not applicable if the transaction involves a purchased fixed rate covered loan.

4(a)(27)

HMDA section 304(b)(6)(C) requires reporting of the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term.[341] Current Regulation C does not require financial institutions to report whether a loan allows or would have allowed the borrower to make payments other than fully amortizing payments. The Bureau believes it is reasonable to interpret HMDA section 304(b)(6)(C) to require reporting non-amortizing features by identifying specific, well-defined non-amortizing loan features. Thus, the Bureau proposed to implement HMDA section 304(b)(6)(C) by requiring the reporting non-amortizing features, including balloon payments, interest only payments, and negative

[339] Dodd-Frank Act section 1094(3)(A)(iv).

[340] 78 FR 6407, 6521 (Jan. 30, 2013).

[341] Dodd-Frank Act section 1094(3)(A)(iv).

amortizations. Proposed § 1003.4(a)(27) requires reporting balloon payments, as defined by 12 CFR 1026.18(s)(5)(i); interest only payments, as defined by 12 CFR 1026.18(s)(7)(iv); a contractual term that could cause the loan to be a negative amortization loan, as defined by 12 CFR 1026.18(s)(7)(v); or any other contractual term that would allow for payments other than fully amortizing payments, as defined by 12 CFR 1026.43(b)(2). For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(27) as proposed.

The Bureau solicited feedback on what method of report non-amortizing features would minimize the burden on small financial institutions but still meet the reporting requirements of the Dodd-Frank Act and the purposes of HMDA. Most commenters, however, supported the proposal to collect non-amortizing features without modification. They stated that the data will indicate whether a high incidence of these features, particularly in loans to vulnerable and underserved populations, is a cause for concern that requires intervention. For the same reason, the Bureau believes that the reporting of non-amortizing features is helpful and can provide insight into lending activity that features these loans. It will provide data about the types of loans that are being made and assist in identifying possible discriminatory lending patterns and enforce antidiscrimination statutes.

A few commenters did not support the Bureau's proposal to require the reporting of non-amortizing features. A financial institution commenter stated that it does not originate loans with risky features and opined that most small institutions probably do not originate such loans either. The Bureau recognizes that loans with non-amortizing features may be rare today. However, such features that may not be present in certain markets today may arise at a later time. Given the risk of payment shock with such products, the Bureau proposed § 1003.4(a)(27)(iv) to ensure the data includes information about non-amortizing products. Furthermore, during the SBREFA process, small entity representatives informed the Bureau that information regarding non-amortizing features of a loan is currently collected by financial institutions. Based on this information, the Bureau concludes that at least some small institutions originate loans that contain non-amortizing features.

Additionally, commenters that opposed the reporting of non-amortizing features reasoned that such information is not helpful and may not even be pertinent to most underwriting and pricing decisions. The Bureau explained in the proposal that non-amortizing features were a rarity but then became more common in the lead-up to the mortgage crisis. These features could be pertinent to underwriting and pricing decisions because of the nature of the risk they pose on the borrower. One commenter stated that HMDA reporters will experience confusion when multiple loan features apply and create difficulties in developing new products. The proposal and the final rule address this concern by aligning the definitions of non-amortizing features for HMDA purposes with existing definitions in Regulation Z. This alignment will facilitate compliance and reduce potential implementation and compliance difficulties.

Accordingly, to implement HMDA section 304(b)(6)(C), the Bureau is finalizing § 1003.4(a)(27) as proposed and is making minor technical amendments and wording changes to the commentary to § 1003.4(a)(27). Data about non-amortizing features will help determine whether financial institutions are serving the housing needs of their communities and assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately.

4(a)(28)

Regulation C does not require financial institutions to report information regarding the value of the property that secures or will secure the loan. HMDA section 304(b)(6)(A) requires the reporting of the value of the real property pledged or proposed to be pledged as collateral.[342] The Bureau proposed § 1003.4(a)(28), which implements this requirement by requiring financial institutions to report the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision. The Bureau proposed a new technical instruction in appendix A for reporting the property value relied on in dollars. In addition, in order to provide clarity on proposed § 1003.4(a)(28), the Bureau proposed new illustrative comments 4(a)(28)–1 and –2.

The Bureau solicited feedback on which property value should be reported. Several commenters, including both industry and consumer advocates, supported the Bureau's proposal to implement the Dodd-Frank Act requirement regarding property value by requiring reporting of the value of the property relied on in making the credit decision in dollars. Other commenters suggested different approaches to collecting property value. One consumer advocate commenter suggested that the Bureau require financial institutions to report the purchase price of the property in all circumstances. Another industry commenter suggested that financial institutions be required to report the final property value determined by the loan underwriter and used in the investment decision.

The Bureau believes that financial institutions should report the value relied on in making the credit decision. Thus, if the financial institution relied upon the purchase price in making the credit decision, the financial institution would report that value. If the final property value determined by a loan underwriter and used in the financial institution's investment decision is the property value that the institution relied on in making the credit decision, then reporting that property valuation will comply with § 1003.4(a)(28). To this end, comment 4(a)(28)–1 explains, if a financial institution relies on an appraisal or other valuation for the property in calculating the loan-to-value ratio, it reports that value; if the institution relies on the purchase price of the property in calculating the loan-to-value ratio, it reports that value.

A national trade association commenter requested that the Bureau clarify that if an application is withdrawn or is closed for incompleteness, a financial institution may report that the requirement is not applicable since there was no reliance on property value in making the credit decision. In order to help facilitate HMDA compliance by providing additional guidance regarding the property value reporting requirement, the Bureau is adopting new comment 4(a)(28)–3, which clarifies how a financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable for transactions for which no credit decision was made. New comment 4(a)(28)–3 clarifies that if a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value.

Two State trade association commenters expressed concern that proposed § 1003.4(a)(28) compels a

[342] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(A).

financial institution to obtain an appraisal even when a property valuation is not in fact required for the underwriting process of a particular transaction or is not required per regulations. In order to address this concern, the Bureau is adopting new comment 4(a)(28)–4, which clarifies that § 1003.4(a)(28) does not require a financial institution to obtain a property valuation, nor does it require a financial institution to rely on a property value in making a credit decision. Comment 4(a)(28)–4 explains that if a financial institution makes a credit decision without relying on a property value, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable since no property value was relied on in connection with the credit decision.

A consumer advocate commenter suggested that the Bureau require reporting of property value if a valuation was performed and even if the property valuation was not relied on in making the credit decision. The Bureau is not adopting this recommendation in the final rule. The Bureau believes that the property value relied on will be more useful in understanding a financial institution's credit decision and other HMDA data, such as pricing information. The proposed standard in § 1003.4(a)(28) requires a financial institution to report the property value relied on in making the credit decision. As explained in new comments 4(a)(28)–3 and –4, if a financial institution has not made a credit decision or has not relied on property value in making the credit decision, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable. The Bureau has determined that this is the appropriate approach for purposes of HMDA compliance.

One State trade association commenter recommended that property value be reported in ranges rather than the actual value to better protect the privacy of applicants. While reporting property value in ranges may address some of the privacy concerns raised by commenters, the Bureau has determined that requiring reporting of the value of the property relied on in making the credit decision in dollars is the more appropriate approach. When coupled with § 1003.4(a)(7), which requires a financial institution to report the exact loan amount, a requirement to report the property value relied on in dollars under § 1003.4(a)(28) will allow the calculation of loan-to-value ratio, an important underwriting variable. Reporting property value in ranges would render these calculations less precise, undermining their utility for data analysis.

A few commenters were concerned that if information regarding property value is made available to the public, such information could be coupled with other publicly available information on property sales and ownership records to compromise a borrower's privacy. The Bureau has considered this feedback. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of HMDA data.

Several commenters, including both industry and consumer advocates, supported the Bureau's proposal to implement the Dodd-Frank Act requirement regarding property value by requiring reporting of the value of the property relied on in making the credit decision in dollars. As discussed above, knowing the property value in addition to loan amount allows HMDA users to estimate the loan-to-value ratio, which measures a borrower's equity in the property and is a key underwriting and pricing criterion. In addition, requiring financial institutions to report information about property value will enhance the utility of HMDA data. Property value data will further HMDA's purposes by providing the public and public officials with data to help determine whether financial institutions are serving the housing needs of their communities by providing information about the values of properties that are being financed; it will also assist public officials in distributing public-sector investment so as to attract private investment by providing information about property values; and it will assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes by allowing information about similar loans to be compared and analyzed appropriately. Moreover, for the reasons given in the section-by-section analysis of § 1003.4(a)(29), the Bureau believes that implementing HMDA through Regulation C to treat mortgage loans secured by all manufactured homes consistently, regardless of legal classification under State law, is reasonable, and is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith.

Accordingly, pursuant to its authority under HMDA sections 305(a) and 304(b)(6)(A), the Bureau is adopting § 1003.4(a)(28) as proposed, with several technical and clarifying modifications to proposed comments 4(a)(28)–1 and –2. In addition, as discussed above, the Bureau is adopting new comments 4(a)(28)–3 and –4, which will help facilitate HMDA compliance by providing additional guidance regarding the property value reporting requirement.

4(a)(29)

Section 304(b) of HMDA permits disclosure of such other information as the Bureau may require. The Bureau proposed § 1003.4(a)(29), which required that financial institutions report whether a manufactured home is legally classified as real property or as personal property. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(29) with modifications, to require financial institutions to report whether a covered loan or application is or would have been secured by a manufactured home and land or a manufactured home and not land.

Since 1988, Regulation C has required reporting of home purchase and home improvement loans and refinancings related to manufactured homes, whether or not the homes are considered real property under State law.[343] Manufactured homes serve vital housing needs in communities and neighborhoods throughout the United States. For example, manufactured housing is the largest unsubsidized source of affordable homeownership in the United States.[344] Manufactured homes also often share certain essential financing features with non-manufactured homes. But classifications of manufactured homes as real or personal property vary significantly among States and can be ambiguous.[345]

Regulation C's consistent treatment of manufactured housing in HMDA data has proven important to furthering HMDA's purposes and provided communities and public officials with important information about manufactured housing lending.[346] The

[343] 53 FR 31683, 31685 (Aug. 19, 1988).

[344] Ann M. Burkhart, *Bringing Manufactured Housing into the Real Estate Finance System,* 37 Pepperdine Law Review 427, 428 (2010), *available at http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1042&context=plr.*

[345] *See* James M. Milano, *An Overview and Update on Legal and Regulatory Issues in Manufactured Housing Finance,* 60 Consumer Financial Law Quarterly Report 379, 383 (2006); Burkhart, *supra* note 344, at 430.

[346] Adam Rust & Peter Skillern, Community Reinvestment Association of North Carolina, *Nine Myths of Manufactured Housing: What 2004 HMDA Data says about a Misunderstood Sector* (2006), *available at http://www.reinvestmentpartners.org/sites/reinvestmentpartners.org/files/Myths-and-Realities-of-Manufactured-Housing.pdf*; Delaware State Housing Authority, *Manufactured Housing in Delaware: A Summary of Information and Issues* (2008), *available at http://www.destatehousing.com/FormsAndInformation/Publications/manu_homes_info.pdf.*

Bureau believes that the unique nature of the manufactured home financing market warrants additional information reporting. Although in many respects manufactured and site built housing are similar, manufactured home financing reflects certain key differences as compared to site built home financing. State laws treat site built homes as real property, with financing secured by a mortgage or deed of trust. On the other hand State law may treat manufactured homes as personal property or real property depending on the circumstances.[347] Manufactured home owners may own or rent the underlying land, which is an additional factor in manufactured home owners' total housing cost and can be relevant to financing.[348]

Many consumer advocate commenters supported the proposed requirement. Some argued, however, that additional information about whether the covered loan was secured by both the manufactured home and land or the manufactured home alone would be valuable in addition to the manufactured home's classification under State law, to distinguish covered loans in States where manufactured homes may be classified as real property even if the home is sited on leased land. Many industry commenters opposed the proposed requirement as burdensome. However, one industry commenter supported the requirement and stated that it had been subject to a fair lending review that would have been unnecessary if the HMDA data had differentiated between land-and-home and home-only manufactured home loans. A few industry commenters stated that in some circumstances financial institutions secure loans using multiple methods to perfect a lien under both State real property and personal property law because of secondary market standards or prudence.

Other commenters argued that State law can be difficult to understand and that the proposed requirement would therefore be difficult to comply with and create the risk that the financial institution would be cited for incorrectly stating the legal classification. Some commenters noted that the legal classification may change after the closing date of the loan. Some industry commenters argued that the proposed requirement did not accurately reflect pricing distinctions made by manufactured housing lenders because pricing is based primarily on whether the security interest will cover both the land and home or the home only, regardless of State law classification. One commenter stated that the proposed requirement is relevant only to individual manufactured home loans, and not loans secured by manufactured home communities.

The Bureau understands that the proposed requirement may pose reporting challenges because of multiple methods of lien perfection and the complexity of and differences among State laws. However, information about manufactured home loan classification is valuable because there are material differences in types of manufactured home financing related to rate, term, origination costs, legal requirements, and consumer protections. These differences are discussed in the Bureau's white paper on Manufactured Housing Consumer Finance in the United States.[349] Furthermore, capturing the pricing distinction between types of manufactured home loans is important to facilitate fair lending analyses. Section 1003.4(a)(29) will provide necessary insight into this loan data and allow it to be used to help determine whether financial institutions are serving the housing needs of their communities, assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes, and, potentially, assist public officials in public-sector investment determinations.[350]

After considering the comments, pursuant to its authority under HMDA section 305(a) and 304(b)(6)(J), the Bureau is adopting § 1003.4(a)(29) with modifications. Pursuant to its authority under HMDA section 305(a) to provide for adjustments for any class of transactions, the Bureau believes that interpreting HMDA to treat mortgage loans secured by all manufactured homes consistently is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith.[351] Final § 1003.4(a)(29) requires financial institutions to report whether the covered loan is secured by a manufactured home and land or a manufactured home and not land instead of whether the manufactured home is legally classified as real or personal property. The Bureau believes that the final rule will facilitate fair lending analyses, and will help to explain pricing data. At the same time, the final rule will avoid the issues associated with reporting classification under State law such as using multiple methods of lien perfection. As adopted, the requirement will also not apply to multifamily dwellings to make clear that covered loans secured by a manufactured home community are not subject to this reporting requirement.

The Bureau is adopting new comment 4(a)(29)–1 to specify that even covered loans secured by a manufactured home classified as real property under State law should be reported as secured by a manufactured home and not land if the covered loan is also not secured by land. The Bureau is adopting new comment 4(a)(29)–2 to specify that this reporting requirement does not apply to loans secured by a multifamily dwelling that is a manufactured home community. Proposed comment 4(a)(29)–1 is adopted as comment 4(a)(29)–3. The Bureau is also adopting new comment 4(a)(29)–4 to provide guidance on the scope of the reporting requirement.

4(a)(30)

Section 304(b) of HMDA permits disclosure of such other information as the Bureau may require. The Bureau proposed to require financial institutions to collect and report whether the applicant or borrower owns the land on which a manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold interest. For the reasons discussed below, the Bureau is finalizing § 1003.4(a)(30) generally as proposed with technical modifications for clarity and to specify that multifamily dwellings are not subject to the reporting requirement.

Many consumer advocate commenters supported the proposed requirement and stated that the information would be valuable. In contrast, many industry commenters opposed the proposed requirement for several reasons. Some industry commenters stated that the proposed requirement is information

[347] Milano, *supra* note 345 at 380.

[348] William Apgar et al., *An Examination of Manufactured Housing Community- and Asset-Building Strategies,* at 5 (Neighborhood Reinvestment Corporation Report to the Ford Foundation, Working Paper No. W02–11, 2002), *available at http://www.jchs.harvard.edu/research/publications/examination-manufactured-housing-community-and-asset-building-strategy.*

[349] *See* Bureau of Consumer Fin. Prot., *Manufactured-Housing Consumer Finance in the United States* (2014), *available at http://www.consumerfinance.gov/reports/manufactured-housing-consumer-finance-in-the-u-s/*; *see also* 79 FR 51731, 51797–98 (Aug. 29, 2014).

[350] U.S. Gov't. Accountability Office, GAO 07–879, *Federal Housing Administration: Agency Should Assess the Effects of Proposed Changes to the Manufactured Home Loan Program* (2007), available at *http://www.gao.gov/new.items/d07879.pdf*; *See* Milano, *supra* note 345 at 383; Burkhart, *supra* note 344 at 428; Washington Hearing, *supra* note 39.

[351] *See also* 79 FR 51732, 51797–98 (Aug. 29, 2014) (explaining basis for treating mortgage loans secured by all manufactured homes consistently).

that they currently do not verify for loans secured by a manufactured home and not land. Other industry commenters stated that they do collect some information about the land interest of the borrower for loans secured by a manufactured home and not land, but that the information reported by the applicant is often unreliable. Other industry commenters stated that the information is not a factor in loan pricing and questioned the value of the information. Some industry commenters stated that the proposed requirement would relate only to individual manufactured home loans and not loans secured by manufactured home communities.

The Bureau believes that the proposed requirement will provide valuable information about the land interest of manufactured home loan borrowers. The information could aid in determining whether borrowers are obtaining loans secured by a manufactured home and not land when they could qualify for a loan secured by a manufactured home and land. This information could aid policymakers at the local, State, and Federal level and financial institutions in determining how the housing needs of manufactured home borrowers could best be served by loan products relating to manufactured homes and legal requirements relating to such financing or the classification and treatment of manufactured homes under State law.[352]

After considering the comments, the Bureau is finalizing § 1003.4(a)(30) with technical modifications for clarity and to specify that multifamily dwellings are not subject to the reporting requirement. The Bureau is finalizing comments 4(a)(30)–1, –2, and –3 generally as proposed, with technical modifications for clarity. The Bureau is adopting new comment 4(a)(30)–4 to clarify that a loan secured by a multifamily dwelling that is a manufactured home community is not subject to the reporting requirement. The Bureau is adopting new comment 4(a)(30)–5 to provide guidance on direct ownership consistent with proposed appendix A. The Bureau is also adopting new comment 4(a)(30)–6 to provide guidance on the scope of the reporting requirement. The Bureau is adopting § 1003.4(a)(30) pursuant to its authority under section 305(a) and 304(b)(6)(J) of HMDA. The Bureau finds that § 1003.4(a)(30) is necessary to carry out HMDA's purposes, because it will provide necessary insight into loan data and allow it to be used to help determine whether financial institutions are serving the housing needs of their communities, since this information can have important implications for the financing, long-term affordability, and appreciation of the housing at issue.

4(a)(31)

Current Regulation C requires financial institutions to identify multifamily dwellings as a property type. The Bureau proposed to add § 1003.4(a)(31), which requires a financial institution to report the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan. As discussed above, the Bureau proposed to replace the current property type reporting requirement with construction method and to separate the concept of the number of units from that reporting requirement. For the reasons discussed below, the Bureau is adopting § 1003.4(a)(31) generally as proposed with additional commentary to provide clarity.

Some commenters supported the proposed requirement and stated that it would provide valuable information about covered loans related to multifamily housing and covered loans related to one- to four-unit dwellings. Other commenters argued that the number of units should be reported in ranges, such 1, 2–4, and 5 or more. Some commenters stated that ranges would be insufficient as they would not permit distinguishing between small and large multifamily dwellings or among one- to four-unit dwellings. Other commenters argued that no requirement to report number of units should be adopted and the current property type requirement should be retained. Some commenters stated that they currently collect an exact total number of units and the data would therefore be easy to obtain, while other commenters stated that they use ranges and the proposed requirement would be burdensome. Some commenters stated that there would be compliance difficulties in reporting total units for certain types of properties, such as manufactured home communities, condominium developments, and cooperative housing developments.

The Bureau believes that reporting the precise number of individual dwelling units would be preferable to ranges. The precise number would permit better comparison among loans related to dwellings with a single dwelling unit, two- to four-unit dwellings, and multifamily dwellings with similar numbers of dwelling units, thus facilitating the analysis of the housing needs served by both small and large multifamily dwellings. Reporting the precise number of units will also facilitate matching HMDA data to other publically available data about multifamily dwellings.

After considering the comments, the Bureau is finalizing § 1003.4(a)(31) as proposed pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA. Multifamily housing has always been an essential component of the nation's housing stock. In the wake of the housing crisis, multifamily housing has taken on an increasingly important role in communities, as families have turned to rental housing for a variety of reasons.[353] The Bureau finds that § 1003.4(a)(31) will further HMDA's purposes by assisting in determinations about whether financial institutions are serving the housing needs of their communities, and it may assist public officials in targeting public investments.

The Bureau received no specific feedback on comment 4(a)(31)–1, which is adopted with modifications for consistency with final comment 4(a)(9)–2. In response to the requests for clarification, the Bureau is adopting three new comments. New comments 4(a)(31)–2, –3, and –4 provide guidance on: Reporting the total units for a manufactured home community; reporting the total units for condominium and cooperative properties; and the information that a financial institution may rely on in complying with the requirement to report total units.

4(a)(32)

The Bureau proposed to add § 1003.4(a)(32), which requires financial institutions to collect and report information on the number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to Federal, State, or local affordable housing programs. The Bureau also solicited comment on whether additional information about the program or type of affordable housing would be valuable and serve HMDA's purposes, and about the

[352] *See* Bureau of Consumer Fin. Prot., *Manufactured-Housing Consumer Finance in the United States* (2014), available at *http://www.consumerfinance.gov/reports/manufactured-housing-consumer-finance-in-the-u-s/*; Consumers Union Report, *Manufactured Housing Appreciation: Stereotypes and Data* (2003), *available at http://consumersunion.org/pdf/mh/Appreciation.pdf*; Katherine MacTavish et al., *Housing Vulnerability Among Rural Trailer-Park Households,* 13 Georgetown Journal on Poverty Law and Policy 97 (2006); Sally Ward et al., Carsey Institute, *Resident Ownership in New Hampshire's ''Mobile Home Parks:'' A Report on Economic Outcomes,* (2010), available at *http://www.rocusa.org/uploads/Carsey%20Institute%20Reprint%202010.pdf.*

[353] See analysis of HMDA data at 79 FR 51731, 51800 (Aug. 29, 2014). *See* San Francisco Hearing, *supra* note 42.

burdens associated with collecting such information compared with the burdens of the proposal. In addition to soliciting feedback generally about this requirement, the Bureau specifically solicited comment on the following points:

- Whether the Bureau should require reporting of information concerning programs targeted at specific groups (such as seniors or persons with disabilities);
- Whether income restrictions above a certain threshold should be excluded for reporting purposes (such as income restrictions above the area median income);
- Whether it would be appropriate to simplify the requirement and report only whether a multifamily dwelling contains a number of income-restricted units above a certain percentage threshold;
- Whether financial institutions should be required to report the specific affordable housing program or programs;
- Whether financial institutions should be required to report the area median income level at which units in the multifamily dwelling are considered affordable; and
- Whether the burden on financial institutions may be reduced by providing instructions or guidance specifying that institutions only report income-restricted dwelling units that they considered or were aware of in originating, purchasing, or servicing the loan.

Many industry commenters opposed the proposed income-restricted units reporting requirement and stated that it would impose new burden on many financial institutions that do not regularly collect this information currently. Many consumer advocate commenters supported the proposed reporting requirement and stated that it would provide valuable information on how financial institutions are serving the housing needs of their communities. However, most consumer advocate commenters argued that the proposed requirement would not provide enough information, and that the Bureau should add additional reporting requirements to gather information about the affordability level of the income-restricted units. Some commenters proposed additional reporting requirements related to multifamily dwellings including the number of bedrooms for the individual dwellings units, whether the housing is targeted at specific populations, the presence and number of commercial tenants, the debt service coverage ratio at the time of origination, and whether the developer or owner of the housing is a mission-driven nonprofit organization.

Regarding whether housing is targeted at specific populations, the Bureau notes that it is providing commentary to the definition of dwelling as discussed above in the section-by-section analysis of § 1003.2(f) regarding when housing associated with related services or medical care should be reported. However, the Bureau does not believe it would be appropriate to adopt a reporting requirement regarding housing targeted at specific populations, at this time.

The Bureau does not have sufficient information on the costs and benefits associated with such a reporting requirement and the challenges in developing an appropriate reporting scheme given the wide variety of housing designated for specific populations including persons with disabilities and seniors. Similarly, the Bureau is not finalizing reporting requirements on the other specific suggestions for multifamily dwellings at this time because it does not have sufficient information on the costs and benefits associated with such reporting requirements and the Bureau believes it may be likely that the burdens of such reporting would outweigh the benefits.

Consumer advocate commenters generally stated that the Bureau should adopt additional data points similar to the data reporting requirements for the GSEs' affordable housing goals.[354] One commenter stated that income-restricted units at 80, 100, or 120 percent of area median income should not be considered affordable and not reported. Other commenters stated that financial institutions should be permitted to rely on information provided by the applicant or considered during the underwriting process to fulfill this reporting requirement.

The Bureau believes that additional information about income-restricted multifamily dwellings would be valuable, but believes any benefits would not justify the burdens for collecting detailed information about the level of affordability for individual dwelling units. The suggestion to align HMDA reporting with the GSE affordable housing goals would require financial institutions to report five data points.[355] The Bureau believes that the GSE affordable housing goal reporting requirements are sufficiently distinct from HMDA that they should not be adopted for HMDA purposes. For example, the HMDA reporting requirement proposed concerns only income-restricted dwelling units, which would generally be identifiable from information about the property and not require tenant income or rent determinations for HMDA reporting, whereas dwelling units may qualify for the GSE affordable housing goals based on tenant income information compared to area median income or on rent levels and adopting a similar reporting requirement for HMDA would therefore require information related to tenant income or rent levels that a financial institution may not consider in all instances when not required to do so by GSE requirements.[356] This would be significantly more burdensome than the requirement proposed. Furthermore, for the GSE affordable housing goals the GSEs themselves participate in analyzing the data and making the determinations, and may estimate in the case of missing information.[357] The Bureau did not propose to participate in making the determinations on affordable housing in a similar way.

Some commenters stated that the burden of imposing the GSE affordable housing goal requirements would not be significant because many HMDA reporters would already be following them for covered loans secured by multifamily dwellings sold to the GSEs. However, according to the 2013 HMDA data, of the 39,861 originated loans secured by multifamily dwellings, only 2,388 were sold to the GSEs within the calendar year of origination. The Bureau is concerned that many financial institutions would not be using the GSE affordable housing goal standards for the majority of their HMDA-reportable loans secured by multifamily dwellings. Therefore, the Bureau is not adopting the suggested reporting requirement aligned with the GSE affordable housing goals.

The Bureau believes that information about the number of income-restricted units in multifamily dwellings is valuable and will further HMDA's purposes, in part by providing more useful information about these vital public resources, and thereby assisting public officials in distributing public-sector investment so as to attract private investment to areas where it is needed. Presently the need for affordable

[354] 12 CFR part 1282, subpart B.

[355] Financial institutions would have to report the number of dwelling units affordable at moderate-income (not in excess of 100 percent of area median income), low-income (not in excess of 80 percent of area median income), low-income (not in excess of 60 percent of area median income), very low-income (not in excess of 50 percent of area median income), and extremely low-income (not in excess of 30 percent of area median income). *See* 12 CFR 1282.17, 12 CFR 1282.18.

[356] 12 CFR 1282.15(d)(1), 12 CFR 1282.15(d)(2).

[357] 12 CFR 1282.15(e).

housing is much greater than the supply.[358] Although the requirement entails additional burden for some financial institutions, other financial institutions that specialize in lending related to income-restricted multifamily housing may have lesser initial burden associated with this requirement. By limiting the requirement to income-restricted units and excluding some other forms of affordable housing policies and programs, the rule provides a well-defined scope of reporting that should generally be verifiable through property records and other sources.

After considering the comments and conducting additional analysis, pursuant to HMDA sections 305(a) and 304(b)(6)(J), the Bureau is finalizing § 1003.4(a)(32) as proposed. The Bureau is adopting new comment 4(a)(32)–5 to provide guidance on information that a financial institution may rely on in complying with the requirement to report the number of income-restricted units. The Bureau is adopting new comment 4(a)(32)–6 to provide guidance on the scope of the reporting requirement. The Bureau is also finalizing comments 4(a)(32)–1, –2, –3, and –4 generally as proposed, with modifications for clarity.

4(a)(33)

The Bureau proposed § 1003.4(a)(33) to implement the Dodd-Frank Act amendment that requires financial institutions to disclose ''the channel through which application was made, including retail, broker, and other relevant categories'' for each covered loan and application.[359] Proposed § 1003.4(a)(33) provided that, except for purchased covered loans, a financial institution was required to report the following information about the application channel of the covered loan or application: whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and whether the obligation arising from the covered loan was or would have been initially payable to the financial institution. The Bureau also proposed illustrative commentary. The Bureau is finalizing § 1003.4(a)(33) as proposed and proposed comments 4(a)(33)–1 through –3 with the modifications discussed below.

Comments

Several consumer advocate commenters expressed support for the proposed requirement, noting the importance of this information in identifying risks to consumers. On the other hand, some industry commenters expressed concerns about proposed § 1003.4(a)(33). One industry commenter explained that collecting this information would be burdensome because financial institutions do not routinely capture it in the proposed format. Another industry commenter asked the Bureau to exempt multifamily loans from this requirement. In addition, a commenter asked the Bureau to exempt community banks because all of their originations come through the same application channel.

Information about the application channel of covered loans and applications will enhance the HMDA data. The loan terms and rates that a financial institution offers an applicant may depend on how the applicant submits the application (*i.e.,* whether through the retail, wholesale, or correspondent channel).[360] Thus, identifying transactions by channel may help users to interpret loan pricing and other information in the HMDA data. In addition, these data will aid in understanding whether certain channels present particular risks for consumers.

While there is some burden associated with collecting this information, the Bureau understands that the burden is minimal because the information is readily available and easily reported in two true-false fields. For the same reasons, the Bureau does not believe that it is appropriate to exclude certain types of institutions or types of loans from the requirement, except the exclusion for purchased loans discussed below.

Some commenters suggested different approaches to collect application channel information. One consumer advocate commenter asked the Bureau to collect the loan channel information as defined by the Secure and Fair Enforcement of Mortgage Licensing Act (SAFE Act), Public Law 110–289, to identify the retail, wholesale, and correspondent channels. However, neither the SAFE Act nor its implementing regulations define loan channels, so it is not possible to align with loan channel definitions in that statute.[361]

In addition, the final rule will collect sufficient information to identify the various loan channels. The application channels in the mortgage market can be identified with three pieces of information: (1) Which institution received the application directly from the applicant, (2) which institution made the credit decision, and (3) the institution to which the obligation initially was payable. For example, the term ''retail channel'' generally refers to situations where the applicant submits the application directly to the financial institution that makes the credit decision on the application and to which the obligation is initially payable. The term ''wholesale channel,'' which is also referred to as the ''broker channel,'' generally refers to situations where the applicant submits the application to a mortgage broker and the broker sends the application to a financial institution that makes the credit decision on the application and to which the obligation is initially payable. The correspondent channel includes correspondent arrangements between two financial institutions. A correspondent with delegated underwriting authority processes an application much like the retail channel described above. The correspondent receives the application directly from the applicant, makes the credit decision, closes the loan in its name, and immediately or within a short period of time sells the loan to another institution. Correspondents with nondelegated authority operate somewhat more like a mortgage broker in the wholesale channel. These correspondents receive the application from the applicant, but prior to closing involve a third-party institution that makes the credit decision. The transaction generally closes in the name of the correspondent, which immediately or within a short period of time sells the loan to the third-party institution that made the credit decision.[362]

Regulation C requires the institution that makes the credit decision to report the action taken on the application, as discussed above in the section-by-section analysis of § 1003.4(a). Therefore, the application channels described above can be identified with the information required by proposed § 1003.4(a)(33), which included whether

[358] Harvard University Joint Ctr. for Housing Studies, *America's Rental Housing: Evolving Market and Needs* (2013), available at *http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs_americas_rental_housing_2013_1_0.pdf.*

[359] Dodd-Frank Act section 1094(3), 12 U.S.C. 2803(b)(6)(E).

[360] *See, e.g.,* Keith Ernst et al., Center for Responsible Lending, *Steered Wrong: Brokers, Borrowers, and Subprime Loans* (April 2008), available at *http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf.*

[361] *See* 12 U.S.C. 5101 *et seq.;* 12 CFR part 1007; 12 CFR part 1008.

[362] *See generally* 78 FR 11280, 11284 (Feb. 15, 2013); *CFPB Examination Procedures on Mortgage Origination* (2014), *http://files.consumerfinance.gov/f/201401_cfpb_mortgage-origination-exam-procedures.pdf.*

the applicant or borrower submitted the application directly to the financial institution that is reporting the loan and whether the obligation was, or would have been, initially payable to the financial institution that is reporting the loan.

An industry commenter suggested that the Bureau implement the Dodd-Frank Act amendment by requiring financial institutions to report whether a broker was involved. The Bureau believes the proposal would be less burdensome than the suggested approach, which would require the final rule to define the term ''broker'' solely for the purpose of HMDA reporting. A broker is generally understood to refer applicants to lenders, but a broker may play a different role in a given transaction depending on the business arrangement it has with a lender or investor. In addition, as discussed above, the commenter's suggested approach would not identify other channels, such as the correspondent channel. Therefore, proposed § 1003.4(a)(33) is the preferable approach.

An industry commenter also opposed the exclusion of purchase loans from the requirement to report the information required by proposed § 1003.4(a)(33). The commenter reasoned that it is more efficient to collect information from investors than from the originating organization. The commenter also did not believe that the information required by § 1003.4(a)(33) would be the same for all purchased loans reported by a financial institution. The Bureau continues to believe that collecting application channel information for purchased loans is unnecessary. Under Regulation C, if the financial institution reports a loan as a purchase, the reporting institution did not make a credit decision on the loan. See the section-by-section analysis of § 1003.4(a) and comments 4(a)–2 through –4. Thus data users could assume that most, if not all, entries reported as purchases did not involve an application submitted to the purchaser and that the loan did not close in the institution's name.

A consumer advocate commenter urged the Bureau to collect a unique identifier for each loan channel in addition to the information required by proposed § 1003.4(a)(33). The final rule will require financial institutions to report the NMLS ID of the loan originator for covered loans and applications. See the section-by-section analysis of § 1003.4(a)(34). The NMLS ID will further help to identify the loan channel.

Direct submission of an application. Some commenters sought clarification about proposed § 1003.4(a)(33)(i), which required financial institutions to indicate whether a financial institution submitted an application directly to the financial institution. A commenter suggested referencing the language used in the SAFE Act about loan origination activities to clarify what proposed § 1003.4(a)(33)(i) required. The Bureau's Regulations G and H, which implement the SAFE Act, provide detailed examples of activities that are conducted by loan originators.[363] If the loan originator that performed loan origination services for the application or loan that the financial institution is reporting was an employee of the reporting financial institution, the applicant likely submitted the application directly to the financial institution. Section 1003.4(a)(34), discussed below, references the definition of loan originator in the SAFE Act, and directs financial institutions to report the NMLS ID of the loan originator that performed origination activities on the covered loan or application. Therefore, the Bureau is modifying proposed comment 4(a)(33)–1, renumbered as comment 4(a)(33)(i)–1 to clarify that an application was submitted directly to the financial institution that is reporting the covered loan or application if the loan originator identified pursuant to § 1003.4(a)(34) was employed by the financial institution when the loan originator performed loan origination activities for the loan or application that the financial institution is reporting.

Another commenter suggested clarifying whether an application is submitted directly to the financial institution if the application is submitted to a credit union service organization (CUSO) hired by the credit union that is reporting the entry to receive applications for covered loans on behalf of a credit union. The Bureau is also modifying proposed comment 4(a)(33)–1, renumbered as comment 4(a)(33)(i)–1, to illustrate how to report whether the application was submitted directly to the financial institution when a CUSO or other similar agent is involved.

Another industry commenter raised privacy concerns about releasing to the public the application channel information. The Bureau appreciates this feedback and is carefully considering the privacy implications of the publicly released data. See part II.B above for a discussion of the Bureau's approach to protecting applicant and borrower privacy with respect to the public disclosure of the data. Due to the significant benefits of collecting this information, the Bureau believes it is appropriate to collect application channel information despite the concerns raised by commenters about collecting this information. The Bureau received no comments on proposed comments 4(a)(33)–2 and –3.

Final Rule

For the reasons discussed above and pursuant to its authority under HMDA sections 304(b)(6)(E) and 305(a), the Bureau is adopting § 1003.4(a)(33) as proposed. This requirement is an appropriate method of implementing HMDA section 304(b)(6)(E) in a manner that carries out HMDA's purposes. To facilitate compliance, pursuant to HMDA 305(a), the Bureau is excepting purchased covered loans from this requirement. The Bureau is also finalizing proposed comments 4(a)(33)–1, –2, and –3, renumbered as comments 4(a)(33)(i)–1, 4(a)(33)(ii)–1, and 4(a)(33)–1, with the modifications discussed above. The Bureau is also adopting new comment 4(a)(33)(ii)–2 to clarify that a financial institution may report that § 1003.4(a)(33)(ii) is not applicable when the institution had not determined whether the covered loan would have been initially payable to the institution reporting the application when the application was withdrawn, denied, or closed for incompleteness.

4(a)(34)

Regulation C does not require financial institutions to report information regarding a loan originator identifier. HMDA section 304(b)(6)(F) requires the reporting of, ''as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the [Secure and Fair Enforcement for] Mortgage Licensing Act of 2008'' (S.A.F.E. Act).[364] The Bureau proposed § 1003.4(a)(34), which implements this requirement by requiring financial institutions to report, for a covered loan or application, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR ID) for the mortgage loan originator, as defined in Regulation G § 1007.102 or Regulation H § 1008.23, as applicable.

In addition, the Bureau proposed three comments. Proposed comment 4(a)(34)–1 discusses the requirement that a financial institution report the NMLSR ID for the mortgage loan

[363] *See* 12 U.S.C. 5101 *et seq.;* 12 CFR part 1007; 12 CFR part 1008.

[364] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(F).

originator and describes the NMLSR ID. Proposed comment 4(a)(34)–2, clarifies that, in the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting ''NA'' for not applicable. Proposed comment 4(a)(34)–2 also provides an illustrative example to clarify that if a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. Lastly, the Bureau proposed comment 4(a)(34)–3, which clarifies that if more than one individual meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, for a covered loan or application, a financial institution complies with § 1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction. The proposed comment explains that a financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction complies with § 1003.4(a)(34).

The vast majority of commenters supported the Bureau's proposed § 1003.4(a)(34). Many consumer advocate commenters supported the Bureau's proposal to include a unique identifier for a mortgage loan originator because this information may help regulatory agencies and the public identify financial institutions and loan originators that are engaged in problematic loan practices. Commenters also supported the Bureau's proposed § 1003.4(a)(34) because they believe the information is critical to understanding the residential mortgage market.

Consistent with the Small Business Review Panel's recommendation, the Bureau specifically solicited comment on whether the mortgage loan originator unique identifier should be required for all entries on the loan/application register, including applications that do not result in originations, or only for loan originations and purchases. One industry commenter stated without explanation that the reporting requirement should only apply to originations and purchases. Another national trade association stated, without further explanation, that reporting of the mortgage loan originator unique identifier should not be required on applications that do not result in originations because such data will not provide any value and will impose burden on industry. In contrast, another industry commenter stated that in order for the NMLSR ID to be useful, such data should only be collected and reported if the loan officer has the authority to decide whether to approve or deny the application. This commenter stated that in such cases, the NMLSR ID would need to be collected for both originated and non-originated applications.

The Bureau has considered this feedback and determined it will adopt proposed § 1003.4(a)(34), which applies to applications, originations, and purchased loans. The Bureau believes the HMDA data's usefulness will be improved by being able to identify individual mortgage loan originators with primary responsibility over applications, originations, and purchased loans. While the Bureau acknowledged in its proposal that a requirement to collect and report a mortgage loan originator unique identifier may impose some burden on financial institutions, the Bureau did not receive feedback specifically addressing the potential burden. In fact, a State trade association commented that reporting the mortgage loan originator's NMLS ID would not pose an additional burden for its members because it already collects and reports this information for the mortgage Call Report. A government commenter also stated that this data should be readily accessible by HMDA reporters since it will be provided on the TILA-RESPA integrated disclosure form.

The Bureau has determined that the benefits gained by the information reported under proposed § 1003.4(a)(34) justify any potential burdens on financial institutions. As discussed in the Bureau's proposal, this information is provided on certain loan documents pursuant to the loan originator compensation requirements under TILA.[365] As noted by a commenter, this information will also be provided on the TILA-RESPA integrated disclosure form.[366] As a result, the Bureau has determined that the NMLSR ID for the mortgage loan originator will be readily available to HMDA reporters at little to no ongoing cost.

Several commenters did not support the Bureau's proposed § 1003.4(a)(34) for two main reasons. This opposition is based on concerns related to disclosure of this information by the Bureau. First, one State trade association and a few industry commenters suggested that review of a mortgage loan originator's performance should be left up to the individual financial institution and not be subject to public scrutiny. Second, a few commenters stated that requiring financial institutions to report the NMLSR ID of the individual mortgage loan originator would raise concerns regarding the privacy of those mortgage loan originators. For example, a State trade association and another industry commenter opposed the Bureau's proposed § 1003.4(a)(34) because it believes disclosing an NMLSR ID in connection with specific loan transactions has the potential to violate the financial privacy of individual employees of a financial institution. The commenter suggested that making this information publicly available would create privacy concerns for a financial institution's loan originator employees by opening the door to identification of the loan originator by name and address. In addition, the commenter argued that this information, combined with other transaction specific public information, could enable someone to calculate an individual loan originator employee's commission income, sales volume and other private financial information. Another industry commenter suggested that if a mortgage loan originator can be identified in the HMDA data, and the loan originator originated a large volume of loans at a financial institution that subsequently fails for reasons unrelated to underwriting, the loan originator may be unable to find employment.

The Bureau has considered this feedback. The Bureau has concluded that it will not withhold from public release the NMLSR ID of mortgage loan originators for the reasons expressed by commenters. As summarized above, the commenters were concerned that the public disclosure of this information may implicate the privacy interests of mortgage loan originators. As discussed in part II.B above, HMDA directs the Bureau to ''modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.'' [367] The Bureau is applying a balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling HMDA's public disclosure purposes. The Bureau will consider NMLSR ID

[365] Regulation Z § 1026.36(g).

[366] Regulation Z § 1026.37(k).

[367] HMDA section 304(h)(1)(E), (h)(3)(B); 12 U.S.C. 2803(h)(1)(3), (h)(3)(B).

under this applicant and borrower privacy balancing test. The Bureau is implementing, in § 1003.4(a)(34), the Dodd-Frank Act amendment to HMDA requiring a unique identifier for mortgage loan originators. Because the Dodd-Frank Act explicitly amended HMDA to add a loan originator identifier, while at the same time directing the Bureau to modify or require modification of itemized information ''for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors,'' the Bureau believes it is reasonable to interpret HMDA as not requiring modifications of itemized information to protect the privacy interests of mortgage loan originators, and that that interpretation best effectuates the purposes of HMDA.

The Bureau is finalizing the Dodd-Frank Act requirement for the collection and reporting of a mortgage loan originator unique identifier as proposed in § 1003.4(a)(34). The Bureau believes that this information will improve HMDA data by, for example, identifying an individual who has primary responsibility in the transaction, which will in turn enable new dimensions of analysis, including being able to link individual mortgage loan originators or groups of mortgage loan originators to a financial institution. Accordingly, the Bureau is adopting § 1003.4(a)(34) as proposed, with minor modification for proposed clarity to proposed comment 4(a)(34)–2 and one substantive change to proposed comment 4(a)(34)–3. In order to facilitate compliance with the new reporting requirement when multiple mortgage loan originators are associated with a particular covered loan or transaction, the comment clarifies that a financial institution reports the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction as of the date of action taken pursuant to § 1003.4(a)(8)(ii). A financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction as of the date of action taken complies with § 1003.4(a)(34).

4(a)(35)

Currently, Regulation C does not require financial institutions to report information regarding results received from automated underwriting systems, and HMDA does not expressly require this itemization. Section 304(b) of HMDA permits the disclosure of ''such other information as the Bureau may require.'' [368] The Bureau proposed § 1003.4(a)(35)(i), which provides that except for purchased covered loans, a financial institution shall report the name of the automated underwriting system it used to evaluate the application and the recommendation generated by that automated underwriting system. In addition, the Bureau proposed § 1003.4(a)(35)(ii), which defines an automated underwriting system (AUS) as an electronic tool developed by a securitizer, Federal government insurer, or guarantor that provides a recommendation regarding whether the application is eligible to be purchased, insured, or guaranteed by that securitizer, Federal government insurer, or guarantor. The Bureau also proposed three comments to provide clarification on the reporting requirement regarding AUS information under proposed § 1003.4(a)(35).

In order to facilitate HMDA compliance and address concerns that it could be burdensome for financial institutions that purchase loans to identify automated underwriting system information, the Bureau excluded purchased covered loans from the requirements of proposed § 1003.4(a)(35)(i). The Bureau solicited feedback on whether this exclusion was appropriate and received a few comments. One consumer advocate commenter recommended that unless and until the ULI is successfully implemented, purchased loans should not be excluded from the automated underwriting data reporting requirement. Another consumer advocate commenter provided feedback recommending that there be no exception for reporting of AUS information for purchased loans. This commenter suggested that the official interpretation of the rule should specify that the Bureau considers it reasonable for any institution purchasing covered loans to negotiate a contractual agreement requiring the seller institution to provide all data required by HMDA. The commenter also suggested that if an exception for purchased loans under proposed § 1003.4(a)(35)(i) remains, it should be limited only to instances where the financial institution does not have and cannot reasonably obtain the AUS information.

The Bureau has considered this feedback and has determined that it would be burdensome for financial institutions that purchase loans to identify the AUS used by the originating financial institution to evaluate the application and to identify the AUS result generated by that system. Consequently, the Bureau is adopting the exclusion of purchased covered loans proposed under § 1003.4(a)(35)(i). The Bureau is also adopting new comment 4(a)(35)–5, which explains that a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

In response to the Bureau's solicitation for feedback regarding whether the proposed AUS requirements are appropriate, a few commenters recommended that the reporting requirement under proposed § 1003.4(a)(35) be optional. For example, one industry commenter stated that reporting AUS data should be optional, not mandatory, since many smaller institutions do not use an automated system to evaluate certain loans. Another commenter stated that financial institutions do not use an AUS to evaluate multifamily and other commercial mortgage finance applications.

While the Bureau acknowledges that proposed § 1003.4(a)(35) will contribute to financial institutions' compliance burden, the Bureau has determined that a requirement of optional reporting of AUS data is not the appropriate approach given the value of the data in furthering HMDA's purposes. As discussed above with respect to denial reasons under § 1003.4(a)(16), the statistical value of optionally reported data is lessened because of the lack of standardization across all HMDA reporters. A requirement that all financial institutions report the name of the AUS used to evaluate an application and the result generated by that system is the proper approach for purposes of HMDA. Moreover, as discussed further below, new comment 4(a)(35)–4 clarifies that a financial institution complies with proposed § 1003.4(a)(35) by reporting that the requirement is not applicable if it does not use an AUS to evaluate the application, for example, if it only manually underwrites an application. In addition, as discussed further below, in order to address the concern that an AUS may not be used for all the types of transactions covered by the final rule, new comment 4(a)(35)–6 clarifies that when the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

In response to the Bureau's solicitation for feedback regarding

[368] Dodd-Frank Act section 1094(3)(A)(iv), 12 U.S.C. 2803(b)(6)(J).

whether the proposed AUS requirements are appropriate, several commenters expressed concern that the Bureau's use of the term ''recommendation'' when describing the output from an AUS is inaccurate since such systems do not provide a credit decision. For example, one industry commenter stated that AUS recommendations are not a proxy for underwriter discretion and that even though an AUS recommendation can inform the level of underwriting that is appropriate for an application, it is not a credit decision on that application. Similarly, another industry commenter stated that when a financial institution obtains an AUS recommendation, the loan is then typically fully underwritten by in-house underwriters who make the final credit decision. Another commenter noted that the output from an AUS does not reflect the complete underwriting decision of a loan application and that a financial institution may have additional requirements such as credit-related overlays on top of those specified by the AUS used by the institution to evaluate the application.

The Bureau considered this feedback and has determined that in order to address the concern that ''AUS recommendation'' incorrectly signals that the recommendation is a credit decision made by the AUS, the Bureau is adopting § 1003.4(35)(i) generally as proposed, but replaces the term ''recommendation'' with ''result.'' Accordingly, the final rule requires a financial institution to report, except for purchased covered loans, the name of the automated underwriting system it used to evaluate the application and the result generated by that automated underwriting system.

The Bureau solicited feedback on whether limiting the definition of an automated underwriting system as proposed in § 1003.4(a)(35)(ii) to one that is developed by a securitizer, Federal government insurer, or guarantor is appropriate, and whether commentary is needed to clarify the proposed definition or to facilitate compliance. The Bureau's proposed AUS definition provided that financial institutions would report AUS data regarding the automated underwriting systems of the government-sponsored enterprises (GSEs)—the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)—other Federal government insurer or guarantor systems, and the proprietary automated underwriting systems of securitizers. The Bureau's proposed AUS definition did not include the proprietary automated underwriting systems developed by financial institutions that are not securitizers, nor the systems of third party vendors. In response to the Bureau's solicitation for feedback, several commenters suggested that the definition of AUS be expanded to include all systems used by financial institutions to evaluate an application. For example, one consumer advocate commenter stated that financial institutions use automated underwriting systems developed and sold by companies that are not securitizers, Federal government insurers or guarantors to determine whether or not loans will be eligible for government guarantee, insurance programs or sale to private investors, and that the Bureau should require financial institutions to report the use of and results from those systems as well. Another industry commenter stated that the Bureau's failure to cover the full range of all platforms used by financial institutions to make a credit decision, including proprietary or third-party AUSs, will necessarily produce incomplete data. Another commenter stated that the Bureau's proposed AUS definition is both under and over inclusive. The commenter argued that the definition is under inclusive because it excludes from HMDA reporting requirements the AUS name and result generated by a system developed by an entity that is not a securitizer, Federal government insurer, or guarantor. The commenter also argued that the definition is over inclusive since it could be interpreted as capturing other electronic tools used by financial institutions that are designed by the secondary market to provide an assessment of credit risk of an applicant or purchase eligibility of a loan, but are not intended to replace the purpose of an AUS.

The Bureau considered this feedback and has determined that it will adopt the proposed definition of AUS in § 1003.4(a)(35)(ii), with three modifications. First, the Bureau added the words ''Federal government'' in front of guarantor to the definition of AUS in the final rule to clarify that the definition captures an AUS developed by a Federal government guarantor, but not one developed by a non-Federal government guarantor. Second, the Bureau added the word ''originated'' to the definition of AUS in the final rule to clarify that in order for an electronic tool to meet the definition of an AUS under § 1003.4(a)(35)(ii), the system must provide a result regarding the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. Third, the Bureau added the words ''the credit risk of the applicant'' to the definition of AUS in the final rule to clarify that in order for an electronic tool to meet the definition of an AUS under § 1003.4(a)(35)(ii), the system must also provide a result regarding the credit risk of the applicant.

In order to facilitate compliance, the Bureau is also adopting new comment 4(a)(35)–2, discussed further below, which explains the definition of AUS and provides illustrative examples of the reporting requirement. In addition, the Bureau recognizes that the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard is different than the automated underwriting systems developed by Fannie Mae and Freddie Mac. TOTAL Scorecard is a tool developed by HUD that is used by financial institutions to evaluate the creditworthiness of applicants and determine an associated risk level of a loan's eligibility for insurance by the FHA. Unlike the automated underwriting systems of the GSEs, TOTAL Scorecard works in conjunction with various automated underwriting systems.[369] However, if a financial institution uses TOTAL Scorecard to evaluate an application, the Bureau has determined that the HMDA data's usefulness will be improved by requiring the financial institution to report that it used that system along with the result generated by that system.

Accordingly, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is adopting § 1003.4(a)(35)(ii), which provides that an automated underwriting system means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor. Notwithstanding the concerns associated with collecting and reporting information about automated underwriting systems and results, the Bureau has determined that this information will further HMDA's purposes. This data will assist in understanding a financial institution's underwriting decisionmaking and will provide information that will assist in

[369] *See http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/total.*

identifying potentially discriminatory lending patterns and enforcing antidiscrimination statutes.

As discussed above, the Bureau solicited feedback on whether commentary is needed to facilitate compliance. Several commenters provided a variety of feedback, including concern that the proposal will result in incomplete or inconsistent data. One commenter noted while the Bureau's proposed commentary recognizes the fact that financial institutions often use multiple AUSs for any given loan application, the proposal leaves open potential inconsistencies in how a lender chooses which AUS to report. For example, a few commenters noted that the ''closest in time'' standard in the proposal for reporting an AUS name and result could result in the HMDA data not capturing AUS data that the financial institution actually considered in making the credit decision. To highlight this concern, one commenter stated that financial institutions may use a ''waterfall strategy'' to evaluate applications by which an institution runs loan applications through one AUS first, then takes the 'caution' loans from the first system and runs them through a second AUS. The commenter stated that the first AUS would see a lower risk population, while the second AUS would see a pre-screened higher risk population. The commenter expressed concern that since the Bureau's proposal requires a financial institution to report one AUS it used to evaluate an application and one AUS result generated by that system, the waterfall approach could potentially provide inaccurate HMDA results if not properly understood because it might be possible that such reporting would exclude AUS data that actually played a role in a financial institution's credit decision. Commenters noted if the Bureau is to take a comprehensive approach to collecting AUS data and address the concerns related to incomplete and inconsistent data, it should take into account the sequential decision making processes that financial institutions may use when running applications through multiple AUSs. One commenter suggested that until the Bureau adopts an approach that takes into account the various differences and complexities involved when a loan application is evaluated using multiple AUSs, it should reconsider requiring disclosure of AUS data. Another commenter recommended that the Bureau require financial institutions to report each AUS result (including non-securitizer proprietary and third party systems) that was used in the credit decision, as well as an indication of the relative importance of each result to the credit decision. Lastly, another commenter requested clarification as to whether a financial institution is required to report AUS information in the circumstance when an AUS provides a negative result, but the institution chooses to assume the credit risk and hold the resulting loan in its portfolio, rather than sell the loan to an investor.

The Bureau considered this feedback and has determined that revisions to the proposed commentary and additional comments will facilitate compliance with the reporting requirement. For example, comment 4(a)(35)–3, discussed further below, provides additional clarity as to what AUS (or AUSs) and result (or results) a financial institution is required to report in cases when the institution uses one or more AUSs, which generate two or more results. In addition, comment 4(a)(35)–1.ii provides two illustrative examples and explains that a financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan.

The Bureau solicited feedback on the proposed requirement that a financial institution enter, in a free-form text field, the name of the AUS used to evaluate the application and the result generated by that system, when ''Other'' is selected. Several industry commenters did not support the proposed requirement for a variety of reasons. A few commenters recommended removal of the free-form text field because it would be impossible to aggregate the data, without further explanation. Another commenter did not support the proposal to include a free-form text field for automated underwriting system information because there is no way to make the text input consistent among staff and financial institutions and as such, suggested that simply requiring a financial institution to report ''Other'' would be appropriate and sufficient. Lastly, another commenter stated that free-form text fields are illogical because they lack the ability of being sorted and reported accurately. This commenter also opined that the additional staff and/or programming that will be needed on a government level to analyze these free text fields is costly and not justified when looking at the minimal impact these fields have on the overall data collection under HMDA.

The Bureau has considered the concerns expressed by industry commenters with respect to the proposed requirement that a financial institution enter the name of the AUS used to evaluate the application and the result generated by that system in a free-form text field when ''Other'' is reported but has determined that the utility of this data justifies the potential burden that may be imposed by the reporting requirement. As to the commenters' concern that data reported in the free-form text field would be impossible to aggregate, perhaps due to the variety of potential AUS names and results reported, the Bureau has determined that the data reported in the free-form text field will be useful even if the data cannot be aggregated.

Lastly, with respect to a commenter's recommendation that requiring a financial institution to report ''Other'' is appropriate and sufficient and that the Bureau should not also require an institution to enter the name of the AUS used to evaluate the application and the result generated by that system in a free-form text field in these circumstances, the Bureau has determined that such an approach would hinder the utility of the AUS data for purposes of HMDA. As with the other free-form text fields the Bureau is adopting—the name and version of the scoring model when ''Other credit scoring model'' is reported by financial institutions under § 1003.4(a)(15) and the denial reason or reasons when ''Other'' is reported by financial institutions under § 1003.4(a)(16)—the free-form text field for AUS data will provide key information on the automated underwriting systems that are not listed and the results generated by those systems. For example, the AUS data can be used to monitor other automated underwriting systems that may enter the market or to add common, but previously unlisted, AUSs and results to the lists. The Bureau has determined that the HMDA data's usefulness will be improved by requiring financial institutions to report the name of the AUS used to evaluate the application and the result generated by that system in a free-form text field when the institution enters ''Other'' in the loan/application register.

The Bureau has modified proposed comments 4(a)(35)–1, –2, which is renumbered as –3, and –3, which is renumbered as –5. The Bureau is also adopting new comments 4(a)(35)–2, –4, and –6. As discussed below, the Bureau believes these modified and new

comments will facilitate compliance with the AUS reporting requirement.

The Bureau is adopting proposed comment 4(a)(35)–1, with modifications. Comment 4(a)(35)–1 explains that a financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the automated underwriting system used by the financial institution to evaluate the application and the result generated by that automated underwriting system, and provides four scenarios to illustrate when a financial institution reports this information.

The Bureau is adopting new comment 4(a)(35)–2, which explains that a financial institution must report the information required by § 1003.4(a)(35)(i) if the financial institution uses an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii), to evaluate an application. Comment 4(a)(35)–2 clarifies that in order for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must be an electronic tool that has been developed by a securitizer, Federal government insurer, or a Federal government guarantor, and provides two illustrative examples. In addition, comment 4(a)(35)–2 explains that in order for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application, and provides an illustrative example. Comment 4(a)(35)–2 clarifies that a financial institution that uses a system that is not an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application does not report the information required by § 1003.4(a)(35)(i).

The Bureau is adopting proposed comment 4(a)(35)–2, with modifications, and renumbered as –3. Comment 4(a)(35)–3 sets forth the reporting requirements under § 1003.4(a)(35) when multiple AUS results are generated by one or more AUSs. Comment 4(a)(35)–3 explains that when a financial institution uses one or more AUS to evaluate the application and the system or systems generate two or more results, the financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS as determined by the principles set forth in the comment. The comment explains that to determine what AUS (or AUSs) and result (or results) to report under § 1003.4(a)(35), a financial institution must follow each of the principles that is applicable to the application in question, in the order in which they are set forth in comment 4(a)(35)–3.

First, comment 4(a)(35)–3.i explains that if a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result, and provides an illustrative example. Comment 4(a)(35)–3.i also explains that if a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth in comment 4(a)(35)–3.ii.

Second, comment 4(a)(35)–3.ii explains that if a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result, and provides an illustrative example. Comment 4(a)(35)–3.ii also explains that if a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth in comment 4(a)(35)–3.iii.

Third, comment 4(a)(35)–3.iii explains that if a financial institution obtains two or more AUS results and none of the systems generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result, and provides illustrative examples.

Lastly, comment 4(a)(35)–3.iv explains that if a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)–3.i through .iii do not apply, the financial institution complies with § 1003.4(a)(35) by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems, and provides an illustrative example. In any event, however, comment 4(a)(35)–3.iv explains that a financial institution does not report more than five AUSs and five results. If more than five AUSs and five results meet the criteria in the principle set forth in comment 4(a)(35)–3.iv, the financial institution complies with § 1003.4(a)(35) by choosing any five among them to report. The Bureau believes that it is reasonable to limit the number of AUSs to five and the number of results to five when a financial institution meets the criteria in the principle set forth in comment 4(a)(35)–3.iv. The Bureau believes that the likelihood of a financial institution evaluating an application through more than five AUSs at the same time is low. Moreover, the Bureau believes that requiring financial institutions to report all AUSs and the results of each of those systems, with no limitation, would be unnecessarily burdensome. Accordingly, as discussed above, comment 4(a)(35)–3.iv limits the number of AUSs and results that financial institutions are required to report to five each.

The Bureau is adopting proposed comment 4(a)(35)–3, with modifications, and renumbered as –4. Comment 4(a)(35)–4 addresses transactions for which an AUS was not used to evaluate the application and explains that § 1003.4(a)(35) does not require a financial institution to evaluate an application using an AUS, as defined in § 1003.4(a)(35)(ii). For example, if a financial institution only manually underwrites an application and does not use an AUS to evaluate the application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable since an AUS was not used to evaluate the application.

Proposed comment 4(a)(35)–3 also addressed transactions for which no credit decision was made by a financial institution by explaining that if a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable. However, the Bureau has determined that it is not adopting this portion of proposed comment 4(a)(35)–3. The Bureau believes that if a financial institution uses an AUS to evaluate an application, regardless of whether the

file is closed for incompleteness or the application is withdrawn before a credit decision is made, the AUS data will assist in understanding the financial institution's underwriting decisionmaking and will provide information that will assist in identifying potentially discriminatory lending patterns and enforcing antidiscrimination statutes. Consequently, if a financial institution uses an AUS to evaluate an application and the file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), a financial institution complies with § 1003.4(a)(35) by reporting the AUS information. Similarly, if a financial institution uses an AUS to evaluate an application and the application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(35) by reporting the AUS information.

As discussed above, the Bureau is adopting new comment 4(a)(35)–5, which explains that a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan. Lastly, the Bureau is adopting new comment 4(a)(35)–6, which explains that a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the applicant and co-applicant, if applicable, are not natural persons. The Bureau believes that comments 4(a)(35)–1 through –6 will provide clarity regarding the new reporting requirement adopted in § 1003.4(a)(35) and will facilitate HMDA compliance.

In response to the Bureau's solicitation for feedback regarding whether the proposed AUS requirements are appropriate, a few commenters expressed concern about potential privacy implications for applicants or borrowers if the Bureau were to release AUS data to the public. One commenter did not support the proposal to include AUS results because it opined that such disclosure is in direct conflict with laws and rules designed to protect a consumer's non-public personal information. This commenter suggested that if AUS results were available to the public, such disclosure would make it easier for hackers around the world to gain access to personal financial data and place the safety and welfare of citizens in jeopardy. A national trade association commented that unless the Bureau establishes the appropriate safeguards against the misuse of sensitive consumer financial data, adding more sensitive and non-public information to HMDA disclosure, such as creditworthiness, creates considerable privacy concerns. Lastly, another commenter stated that the release of AUS data, either alone or when combined with other publicly available sources (including loan-level data associated with mortgage-backed securities issuances) could increase the risk to borrower privacy by facilitating re-identification of borrowers.

A few commenters also expressed concern about the disclosure of confidential, proprietary information if the Bureau were to release AUS data to the public. One commenter did not support proposed § 1003.4(a)(35) because, it argued, lenders would be required to disclose proprietary information. Another commenter expressed concern that competitor financial institutions could use public HMDA data to reverse engineer its proprietary underwriting systems, thereby harming its competitive position in the mortgage marketplace. Similarly, another commenter stated that to the extent that AUS data are available to persons outside government, such disclosure may pose serious risks that persons would seek to reverse engineer proprietary and confidential information about how an AUS is designed and risks significant competitive disadvantages for such entities whose AUS information would be collected. The commenter explained that persons may seek to reverse engineer the decision-making and purchase-process used by an AUS by analyzing the recommendations in connection with the other HMDA data that is disclosed to the public. The commenter reasoned that as a result of the volume of loan-level data reported pursuant to HMDA, disclosure of AUS data may well enable competitors and other parties to seek to recreate the criteria used by an AUS to reach recommendations on loans. The commenter urged the Bureau to ensure that if AUS data are to be reported by financial institutions, that only regulators of financial institutions and other government agencies responsible for fair lending enforcement have access to such data, and that it not be made available to financial institutions or others. Lastly, another commenter also expressed concern that the release of AUS data could facilitate reverse engineering to reveal proprietary information about an AUS and the profile of loans sold to a particular entity. The commenter stated that this could have a significant impact on an entity that developed an AUS by revealing proprietary information about the design of the AUS as well as the entity's loan purchases, security performance, and portfolio management.

On the other hand, several commenters recommended that AUS data be released to the public and supported the proposal primarily based on the argument that such data will assist in fair lending analyses as well as in understanding access to credit. For example, one consumer advocate commenter stated that the collection and public dissemination of AUS information will help regulators, policymakers, and the public to more precisely investigate discriminatory mortgage lending. Another consumer advocate commenter stated that AUS data will identify which lenders rely on AUSs heavily as opposed to which lenders use manual underwriting, which it argued, can result in responsible lending being more accessible to populations that may have thin credit files or less than perfect credit. Lastly, another commenter stated that AUS data provides important insight into the modern underwriting process that will help policymakers better understand credit constraints and the challenges to maintaining broad access to credit.

The Bureau has considered this feedback. It anticipates that, because public disclosure of itemized AUS data may raise concerns, such release may not be warranted. However, at this time the Bureau is not making determinations about what HMDA data will be publicly disclosed or the forms of such disclosures.

4(a)(36)

Currently, neither HMDA nor Regulation C requires a financial institution to report whether a reportable transaction is a reverse mortgage. Although reverse mortgages that are home purchase loans, home improvement loans, or refinancings are reported under Regulation C currently, financial institutions are not required to separately identify if a reported transaction is a reverse mortgage.[370] Proposed § 1003.4(a)(36) provided that a financial institution must record whether the covered loan is, or the application is for, a reverse mortgage, and whether the reverse mortgage is an open- or closed-end transaction. The

[370] The Bureau received a number of comments from consumer advocacy groups and industry commenters about including a reverse mortgage transaction as a type of covered loan that must be reported. The Bureau addresses those comments in the section-by-section analysis of § 1003.2(q), which defines ''reverse mortgage.''

Bureau solicited feedback regarding whether this proposed requirement is appropriate, whether commentary would help clarify or illustrate the requirement, and any costs and burdens associated with the proposed requirement.[371] For the reasons discussed below, the Bureau is finalizing in § 1003.4(a)(36) a requirement to identify whether the covered loan is, or the application is for, a reverse mortgage.

Industry commenters opposed the requirement to report whether a loan or application is for a reverse mortgage because reverse mortgages are a small portion of the market. Consumer advocates supported the requirement, noting that data users currently cannot identify the populations taking out reverse mortgages. Consumer advocates generally stated that identifying which reported loans and lines of credit are reverse mortgages will help illuminate patterns of equity extraction by older consumers.

It is important that the public and regulators be able to identify easily which transactions covered by Regulation C involve reverse mortgages. Reverse mortgages are substantively different from other mortgages and are subject to different underwriting criteria.[372] Including in the dataset an indicator that readily identifies the transaction as a reverse mortgage will provide necessary context on the other data reported for the same transaction. For example, identification of a transaction as a reverse mortgage may help explain why certain data points are reported as not applicable to the transaction. As a result, financial institutions will need to spend less time verifying submitted data and users will have a better context in which to consider the data submitted, both for that transaction and in comparison with other transactions.

Pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is finalizing in § 1003.4(a)(36) a requirement to identify whether the covered loan is, or the application is for, a reverse mortgage. However, because the Bureau is also adopting § 1003.4(a)(37), which will require financial institutions to identify whether the transaction involves an open-end line of credit, it is not necessary to require financial institutions to separately identify whether the reverse mortgage is a closed-end or open-end transaction. Instead, the final rule simplifies the reporting requirement in § 1003.4(a)(36) to indicate only whether the transaction involves a reverse mortgage. Data users can use the reverse mortgage and open-end line of credit indicators in combination to determine whether a transaction involves a reverse mortgage and, if so, the type of reverse mortgage. This simplification also addresses the request of one consumer group to clarify potentially confusing terminology used in the proposed rule for different types of open-end lines of credit.

4(a)(37)

Currently, neither HMDA nor Regulation C requires a financial institution to identify whether a reportable transaction is an open-end line of credit. Although dwelling-secured lines of credit currently may be reported as home purchase loans or home improvement loans, users of the HMDA data cannot identify which reported transactions involve open-end lines of credit. Proposed § 1003.4(a)(37) provided that a financial institution must record whether the covered loan is, or the application is for, an open-end line of credit, and whether the covered loan is, or the application is for, a home-equity line of credit. The proposed rule defined ''open-end line of credit'' as a new term in Regulation C, and did not revise the current definition of home-equity line of credit. As discussed in the section-by-section analyses of § 1003.2(h) and (o), the final rule deletes the definition of ''home-equity line of credit'' and modifies the proposed definition of ''open-end line of credit.'' The modified definition of open-end line of credit subsumes the current definition of home-equity line of credit. For the reasons discussed below, the Bureau is finalizing in § 1003.4(a)(37) a requirement that financial institutions identify whether the covered loan is, or the application is for, an open-end line of credit, as that term is defined in the final rule.

The Bureau solicited feedback regarding whether the proposed requirement to identify whether the transaction involved an open-end credit plan is appropriate and whether commentary would help clarify the requirement. Most commenters who addressed dwelling-secured open-end credit plans did not address this solicitation for comment. A number of industry participants recommended modifying the proposal to identify the transaction as either involving a home-equity line of credit, or not.[373] Similarly, a consumer advocacy group commented that distinguishing between open-end lines of credit that are home-equity lines of credit and those that are not is confusing.

Some of the concerns that commenters raised about reporting HMDA data on dwelling-secured open-end credit plans will be mitigated by also requiring financial institutions to indicate whether the transaction being reported involves an open-end line of credit.[374] Specifically, a number of industry commenters stated that a requirement to report data on open-end lines of credit would likely result in skewed data, including data that may create an inaccurate appearance of subprime lending. Industry trade groups stated that commingling data on open-end lines of credit with HMDA data on closed-end mortgage loans will produce misleading information. However, consumer advocates commented that having additional information about dwelling-secured open-end credit plans will enable communities to more fully understand the mortgage market and better serve vulnerable populations. One consumer advocate commented that open-end lines of credit should be identified in the data, given the difference in their underwriting relative to closed-end loans. Another consumer advocate commented that, without an indication that the transaction involves open-end credit, information on loan term and price is less meaningful.

It is important that the public and public officials be able to identify easily which transactions covered by Regulation C involve open-end lines of credit. Open-end lines of credit are a different credit product than closed-end mortgage loans. Including in the dataset an indicator that readily identifies the transaction as an open-end line of credit will provide the public and public officials more context for the other data reported for the same transaction and will facilitate more-effective data analysis. For example, identification of a transaction as an open-end line of credit may help explain why the financial institution has reported certain data points as being not applicable to the transaction. As a result, financial

[371] Commenters did not address the cost of finalizing the requirement to identify whether a transaction involves a reverse mortgage. However, the costs and benefits of all of the new and revised data points are discussed elsewhere in the Supplementary Information.

[372] *See generally* CFPB Report to Congress on Reverse Mortgages (2012), *available at http://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf.*

[373] These commenters generally also favored eliminating commercial loans from coverage under Regulation C, which they stated would eliminate reporting of most open-end lines of credit that are not home-equity lines of credit under the current definition in Regulation C. The coverage of commercial and business loans is discussed in the section-by-section analysis of § 1003.3(c)(10).

[374] ''Open-end line of credit'' is defined in § 1003.2(o) of the final rule.

institutions will need to spend less time verifying submitted data and the public will have a better context in which to consider the data submitted, both for that transaction and in comparison with other transactions.

Therefore, pursuant to its authority under sections 305(a) and 304(b)(6)(J) of HMDA, the Bureau is finalizing § 1003.4(a)(37), which requires that financial institutions identify whether covered loans are, or applications are for, an open-end line of credit. The Bureau, however, is not finalizing the proposal that financial institutions also identify whether the covered loan is, or the application is for, a home-equity line of credit. As discussed in the section-by-section analysis of § 1003.4(a)(38), the final rule also requires financial institutions to identify whether the covered loan is, or the application is for, a covered loan that is, primarily for a business or commercial purpose. In combination, the open-end line of credit indicator and the business- or commercial-purpose indicator can be used to identify whether open-end credit is for a consumer or business purpose.[375] Therefore, a separate indicator for a consumer-purpose open-end credit plan secured by a dwelling is not necessary.[376] The final rule simplifies the reporting requirement in § 1003.4(a)(37) to indicate only whether the transaction involves an open-end line of credit. Simplifying the data point that indicates an open-end line of credit also addresses the request of one consumer group to clarify potentially confusing terminology used in the proposed rule for several types of open-end credit.

The Bureau did not propose any comment to accompany proposed § 1003.4(a)(37) and commenters did not request clarifying commentary. For consistency and convenience, however, the final rule adds new comment 4(a)(37)–1, which references comments 2(o)–1 and –2 for guidance on determining whether a covered loan is, or an application is for, an open-end line of credit.

4(a)(38)

Qualified Mortgage Indicator

Currently, neither HMDA nor Regulation C contains requirements related to whether a loan would be considered a qualified mortgage under Regulation Z. Proposed § 1003.4(a)(38) provided that a financial institution must record whether the covered loan is subject to the ability-to-repay provisions of Regulation Z and whether the covered loan is a qualified mortgage, as described under Regulation Z.[377] The proposed rule also specified that financial institutions report the qualified mortgage information using a code to indicate which type of qualified mortgage described the covered loan. The Bureau solicited feedback regarding whether the proposed requirement was appropriate, would result in more useful data, and would impose additional burdens or result in additional challenges that the Bureau had not considered in making the proposal. In addition, the Bureau requested feedback regarding whether modifications to the proposed requirement would minimize the burden of collecting information related to a covered loan's qualified mortgage status. For the reasons discussed below, the Bureau is not finalizing proposed § 1003.4(a)(38).

The Bureau received a significant number of comments from consumer advocacy groups, researchers, financial institutions, State and national trade associations, and other industry participants concerning proposed § 1003.4(a)(38). Consumer advocates and researchers supported reporting whether a covered loan is a qualified mortgage. Some of these commenters also noted that a covered loan may fit into more than one category of qualified mortgage and that, if finalized, the reporting requirements should be structured to accommodate changes in underlying regulations (such as sunsetting categories for qualified mortgages). Some also recommended that financial institutions should report all of the categories under which a loan can be characterized as a qualified mortgage. A consumer advocacy group stated that qualified mortgage status limits liability for lenders, so these loans should be monitored closely to determine if that status results in more sustainable loan terms and better loan performance. Several consumer advocacy and research organization commenters identified the qualified mortgage data as one of the most important additions proposed and stated that understanding exactly how the Bureau's qualified mortgage regulation is affecting mortgage credit is critical to ensuring that the Bureau's joint goals of access to credit and consumer protection are both achieved.

Industry commenters recommended against requiring reporting of qualified mortgage status. Some noted the same issues as consumer advocates and researchers had noted. In addition, industry commenters questioned the HMDA purpose for this data point and asserted a potentially stigmatizing effect for loans that are not qualified mortgages that would be inconsistent with Federal banking agencies' joint guidance and oral statements preserving a role for non-qualified mortgage loans.[378] Financial institutions and industry trade groups commented that whether a loan is a qualified mortgage is often not known at origination. For example, one industry commenter reported that it does not limit its lending to qualified mortgages, so it would be burdensome and expensive to implement systems to track and report qualified mortgage status. Other industry commenters stated that whether a loan could be a qualified mortgage may be revealed by other data points, when considered together, including points and fees; rate spread; existence of features such as negative amortization, balloon payments, and prepayment penalties; whether a loan is backed by a government-sponsored enterprise or Federal agency; automated underwriting system results; high-cost status; and debt-to-income ratio. A number of industry commenters expressed concern about the consequences of misreporting a loan as either a qualified mortgage or not a qualified mortgage. Industry commenters requested that if the Bureau requires reporting the qualified mortgage status of loans, it should also add options to indicate whether a loan is exempt from the ability-to-repay requirements and whether the qualified mortgage status was relevant to the credit decision, and clarify reporting responsibilities for repurchases of loans misreported as qualified mortgages and for small-creditor loans sold to a buyer that is not a small creditor.

Coverage conditions and exemptions applicable to the ability-to-repay requirements mean that the reporting requirements in the proposed rule did

[375] *See* § 1003.2(o) for additional discussion of consumer- and business-purpose open-end credit.

[376] In addition, because open-end line of credit is defined to be more comprehensive than home-equity line of credit, retaining both terms in Regulation C could result in inconsistencies in reporting the information.

[377] The ability-to-repay provisions are in 12 CFR 1026.43. The proposed rule invoked the provisions on qualified mortgage in § 1026.43(e) and (f).

[378] CFPB, OCC, Bd. of Governors of the Fed. Reserve System, FDIC, and NCUA, *Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule* at 2 (2013), *http://files.consumerfinance.gov/f/201310_cfpb_guidance_qualified-mortgage-fair-lending-risks.pdf.* In part, the statement explains:

[C]onsistent with the statutory framework, there are several ways to satisfy the Ability-to-Repay Rule, including making responsibly underwritten loans that are not Qualified Mortgages. The Bureau does not believe that it is possible to define by rule every instance in which a mortgage is affordable for the borrower.

not apply to applications or open-end lines of credit, reverse mortgages, extensions of credit pursuant to certain programs, multifamily loans, or business-purpose loans. At the time of the proposed rule, the Bureau believed that financial institutions would be in a position to report the qualified mortgage status of each covered loan in a manner that is consistent with the regular business practices of financial institutions, and that such a reporting requirement would not be unduly burdensome. The Bureau has been persuaded, however, that reporting the qualified mortgage status and, as applicable, the type of qualified mortgage for each loan will impose burdens identified by industry commenters that were not intended and would not be justified by the benefits of this additional reporting requirement in the HMDA data. The final rule includes other new data that might be used to approximate the borrower's ability to repay and the loan's qualified mortgage status with sufficient accuracy to serve HMDA's purposes. Financial institutions should be able to provide this other data readily, without having to develop new collection mechanisms as might be necessary to report qualified mortgage status. In addition, the Bureau has not changed its position that non-qualified mortgages can satisfy ability-to-repay standards. The Bureau had not intended that a financial institution reporting under HMDA its reasonable belief about the qualified mortgage status of its loans at a point in time should be susceptible to increased public or regulatory scrutiny based on that classification.

Therefore, the Bureau is not finalizing proposed § 1003.4(a)(38).

Business- or Commercial-Purpose Indicator

Currently, neither HMDA nor Regulation C requires a financial institution to report whether a reportable transaction has a business or commercial purpose. Although business- and commercial-purpose transactions that are home purchase loans, home improvement loans, or refinancings are reported under Regulation C currently, financial institutions are not required to separately identify if a reported transaction has a business or commercial purpose.[379] In the proposed rule, the Bureau expanded coverage of business and commercial transactions, but it did not separately propose a specific requirement for financial institutions to differentiate those transactions in their reported HMDA data.[380] As discussed in the section-by-section analysis of § 1003.3(c)(10), the final rule maintains the current requirement that financial institutions must report business- and commercial-purpose transactions that are home purchase loans, home improvement loans, or refinancings. To make the data collected on business- and commercial-purpose transactions more useful, § 1003.4(a)(38) of the final rule requires financial institutions to report whether the covered loan or application is or will be made primarily for a business or commercial purpose.

Even though the final rule does not expand the scope of coverage of business- and commercial-purpose loans, some of the concerns that commenters raised about reporting HMDA data on all business- and commercial-purpose loans are relevant to the current, more limited reporting requirements.[381] For example, some industry commenters stated that mixing data about dwelling-secured, commercial-purpose transactions with traditional mortgage loans would skew the HMDA dataset and impair its integrity for users of the data. These concerns will be mitigated by also requiring financial institutions to indicate whether the transaction being reported involves business- or commercial-purpose credit. Including in the dataset an indicator that readily identifies the transaction as business- or commercial-purpose credit will provide the public and public officials more context for the other data reported for the same transaction and will facilitate more-effective data analysis. The public and public officials will be able to use this information to improve their understanding of how financial institutions may be meeting the housing needs of their communities and public-sector funds are being distributed. These HMDA purposes are served by gathering data not only about transactions to individual consumers for consumer purposes, but also, for example, about the available stock of multifamily rental housing in particular communities.

For the reasons discussed above and pursuant to the Bureau's authority under sections 305(a) and 304(b)(6)(J) of HMDA, § 1003.4(a)(38) of the final rule provides that a financial institution must identify whether the covered loan or application is or will be made primarily for a business or commercial purpose.

Proposed 4(a)(39)

Section 304(b) of HMDA permits the disclosure of such other information as the Bureau may require.[382] Pursuant to HMDA sections 305(a) and 304(b)(5)(D), the Bureau proposed to require financial institutions to report, for a home-equity line of credit and an open-end reverse mortgage, the amount of the draw on the covered loan, if any, made at account opening. For the reasons given below, the Bureau is not finalizing proposed § 1003.4(a)(39).

Several consumer advocates supported the proposed requirement to report the initial draw for an open-end line of credit. One consumer advocate said that such information would assist in identifying loans where the borrower draws an amount at or close to the maximum amount available for the line of credit. The commenter believed that these loans were more properly characterized as closed-end credit. Another consumer advocate stated that, for reverse mortgages, large initial draws may be predictive of future financial difficulties. Information regarding the initial draw on an open-end line of credit might provide important information about the behavior and degree of leverage of borrowers with such loans.

Industry commenters, however, almost universally opposed the initial draw reporting requirement. Many of these commenters believed that the amount of the initial draw would provide no valuable data. A few commenters stated that the first draw played an insignificant role in underwriting or pricing decisions, and other commenters noted that the amount reflected the choice of the borrower. Several commenters were generally skeptical of the utility of the information or asserted that it offered little value for purposes of fair lending analysis or determining whether financial institutions were meeting the housing needs of their communities.

The amount of the initial draw on a home-equity line of credit or an open-end reverse mortgage would provide

[379] The Bureau received many comments about the coverage of business- and commercial-purpose loans in HMDA and Regulation C. The Bureau addresses those comments in the section-by-section analysis of § 1003.3(c)(10), which provides an exclusion for some business- and commercial-purpose transactions.

[380] In the proposed rule, the Bureau invited feedback regarding whether, if commercial loans were not exempted in the final rule, it would be appropriate to add a loan purpose requirement applicable to commercial loans or some other method of uniquely identifying commercial loans in the HMDA data. 79 FR 51731, 51767 (Aug. 29, 2014).

[381] *See* section-by-section analysis of § 1003.3(c)(10).

[382] Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA.

information about the leverage of borrowers with open-end lines of credit. The extent of leverage is important for evaluating the potential overextension of credit and the risk of default faced by borrowers in certain communities. Such information may also be used to detect structural problems in the mortgage market. However, the initial draw often consists only of an amount necessary to cover fees or charges associated with opening the account, or to satisfy the requirements of a particular promotion. The Bureau believes that these data would fail to provide the information about borrower leverage or use of open-end lines of credit that the proposal intended to capture. Industry commenters also stated that proposed § 1003.4(a)(39) would distort the HMDA data. The Bureau understands that many initial draws do not occur at account opening for a variety of reasons. For example, consumers might wait days or even months before drawing on the line of credit. By requiring reporting of the draw at account opening, proposed § 1003.4(a)(39) would omit these draws and therefore fail to serve its intended purpose.

The Bureau could extend the reporting period applicable to proposed § 1003.4(a)(39) in an attempt to capture information about these loans. However, the Bureau understands that the necessary information often exists in separate loan servicing systems rather than the loan origination system. As detailed in the section 1022 discussion below, the Bureau recognizes that mandatory open-end line of credit reporting will impose a significant operational burden on financial institutions, largely because open-end lines of credit are originated and maintained on different computer systems than traditional mortgages. Upgrading or integrating the separate systems used to originate and service open-end lines of credit would represent a similar operational burden. Forcing such a systems change for the purpose of collecting a single data point would impose an unjustified burden on financial institutions.

For the reasons provided above, the Bureau is not finalizing proposed § 1003.4(a)(39).

4(b) Collection of Data on Ethnicity, Race, Sex, Age, and Income

Section 1003.4(b)(1) of current Regulation C requires that a financial institution collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B. Section 1003.4(b)(2) provides that the ethnicity, race, sex, and income of an applicant or borrower may but need not be collected for loans purchased by the financial institution. The Bureau proposed to add age to § 1003.4(b)(1) and (b)(2), and proposed to amend § 1003.4(b)(1) by requiring a financial institution to collect data about the ethnicity, race, sex, and age of the applicant or borrower as prescribed in both appendices A and B. The Bureau also proposed minor wording changes to § 1003.4(b)(1) and (b)(2).

Consistent with the current requirement under the regulation, proposed § 1003.4(b)(2) provided that ethnicity, race, sex, and income data may but need not be collected for loans purchased by a financial institution. While the proposed reporting requirement does not require reporting of ethnicity, race, sex, age, and income for loans purchased by a financial institution, the Bureau solicited feedback on whether this exclusion is appropriate. In particular, the Bureau specifically solicited feedback on the general utility of ethnicity, race, sex, age, and income data on purchased loans and on the unique costs and burdens associated with collecting and reporting the data that financial institutions may face if the reporting requirement were modified to no longer permit optional reporting but instead require reporting of this applicant and borrower information for purchased loans.

A few commenters opposed the proposed optional reporting of ethnicity, race, sex, age, and income for loans purchased by a financial institution. For example, one consumer advocate stated that the proposal creates a significant gap in the data that is reported under HMDA and such data is important to achieving HMDA's goals. The commenter noted that while it may be possible to close this gap by using the proposed ULI to match a purchased loan with the data on the ethnicity, race, sex, age, and income reported by the originating financial institution, doing so will be time consuming and would require a significant effort from users of the data. The commenter recommended that the Bureau clarify in commentary that the Bureau considers it reasonable for any institution purchasing covered loans to negotiate a contractual agreement requiring the seller institution to provide all data required by HMDA. The commenter also suggested that if the optional reporting of the ethnicity, race, sex, age, and income for purchased loans under proposed § 1003.4(b)(2) remains, it should be limited only to instances where the financial institution does not have and cannot reasonably obtain the information. Another consumer advocate suggested that reporting of demographic information on purchased loans be required to enhance its understanding of trends in the mortgage market and how well financial institutions are or are not serving the communities which it represents. Similarly, another commenter expressed concern that an increase in the depository institution threshold and any delay in establishing a unique ULI will enable the nonreporting of critical demographic data with respect to large numbers of purchased loans and as such, recommended that the Bureau extend the mandatory reporting of ethnicity, race, sex, age, and income to purchased loans. Lastly, another commenter recommended that unless and until the ULI is successfully implemented, purchased loans should not be excluded from this reporting requirement.

On the other hand, the industry commenters who addressed this aspect of the proposal supported the current optional reporting of ethnicity, race, sex, age, and income data on purchased loans. For example, one industry commenter recommended that reporting of this data should only be optional because it would be an enormous regulatory burden for community banks to collect and report. Another commenter stated that purchased loans should not be subject to HMDA reporting overall.

The Bureau is adopting § 1003.4(b)(1) as proposed, with a few changes. First, the Bureau deleted reference to appendix A in § 1003.4(b)(1) since the instructions in the final rule requiring a financial institution to collect data about the ethnicity, race, and sex of the applicant or borrower are located in appendix B. Second, the Bureau removed age from § 1003.4(b)(1) since, as discussed above, the instructions in the final rule requiring a financial institution to collect the age of an applicant or borrower are found in comments 4(a)(10)(ii)–1, –2, –3, –4, and –5.

The Bureau has considered the feedback and determined that the final rule will continue to allow for optional reporting of ethnicity, race, sex, and income for loans purchased by a financial institution. In addition, as proposed, the final rule will also allow optional reporting of age for loans purchased by a financial institution. While the Bureau recognizes the potential utility of ethnicity, race, sex, age, and income data on purchased loans, it is concerned with the costs and burdens associated with collecting and reporting the data that financial institutions will face if the reporting

requirement is mandatory. Consequently, the Bureau is adopting § 1003.4(b)(2) as proposed, which provides a financial institution with the option to collect the ethnicity, race, sex, age, and income data for covered loans it purchased.

4(c) Optional Data

4(c)(1)

Current § 1003.4(c)(1) provides that a financial institution may report the reasons it denied a loan application but is not required to do so. As discussed in the section-by-section analysis of § 1003.4(a)(16), the final rule makes reporting of denial reasons mandatory instead of optional. To conform to that requirement, the final rule deletes § 1003.4(c)(1).

4(c)(2)

Current § 1003.4(c)(2) provides that a financial institution may report requests for preapproval that are approved by the institution but not accepted by the applicant but is not required to do so. The Bureau proposed to make reporting of requests for preapprovals approved by the financial institution but not accepted by the applicant mandatory under § 1003.4(a) instead of optional under § 1003.4(c)(2). Few commenters addressed this proposal specifically, though as discussed above in the section-by-section analysis of section 2(b)(2) some commenters addressed other aspects of preapproval programs. A few commenters questioned the value of mandatory reporting for preapprovals approved but not accepted. The Bureau is finalizing the requirement to report preapprovals approved by the financial institution but not accepted by the applicant because it believes that reporting of preapprovals approved by the financial institution but not accepted by the applicant provides context for denials of preapproval requests, and improves fair lending analysis because it allows denials to be compared to a more complete set of approved preapproval requests.[383] To conform to that requirement, the final rule deletes § 1003.4(c)(2).

4(c)(3)

Section 1003.4(c)(3) of Regulation C currently provides that a financial institution may report, but is not required to report, home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase. As discussed in the section-by-section analysis of § 1003.2(o), the final rule makes reporting of open-end lines of credit (which include home-equity lines of credit) mandatory, rather than optional. To conform to that modification, the final rule deletes § 1003.4(c)(3) and comment 4(c)(3)–1.

4(d)

Section 1003.4(d) of Regulation C currently provides exclusions for certain data. As discussed in the section-by-section analysis of § 1003.3(c), the Bureau is moving those exclusions to § 1003.3(c). To conform to this modification, the final rule removes and reserves § 1003.4(d).

4(e)

For ease of reference, the Bureau is republishing § 1003.4(e) and making technical modifications. No substantive change is intended.

4(f) Quarterly Recording of Data

The Bureau proposed to move the data recording requirement in § 1003.4(a) to proposed § 1003.4(f) and to make technical modifications to the requirement. Proposed § 1003.4(f) provided that a financial institution was required to record[384] the data collected pursuant to § 1003.4 on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action was taken (such as origination or purchase of a covered loan, or denial or withdrawal of an application). The Bureau received no comments on proposed § 1003.4(f) and is finalizing it with technical amendments. The Bureau is renumbering proposed comment 4(a)–1.iv as comment 4(f)–1 and existing comments 4(a)–2 and –3 as comments 4(f)–2 and –3, respectively. The Bureau is also making technical modifications to these comments to clarify a financial institution's obligation to record data on a quarterly basis.

Section 1003.5 Disclosure and Reporting

5(a) Reporting to Agency

5(a)(1)

HMDA section 304(h)(1) provides that a financial institution shall submit its HMDA data to the Bureau or to the appropriate agency for the institution in accordance with rules prescribed by the Bureau. HMDA section 304(h)(1) also directs the Bureau to develop regulations, in consultation with other appropriate agencies, that prescribe the format for disclosures required under HMDA section 304(b), the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public. HMDA section 304(n) also requires that the data required to be disclosed under HMDA section 304(b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under HMDA, in accordance with regulations prescribed by the Bureau. HMDA section 304(c) requires that information required to be compiled and made available under HMDA section 304, other than loan/application register information under section 304(j), must be maintained and made available for a period of five years.[385]

Currently, § 1003.5(a)(1) of Regulation C requires that, by March 1 following the calendar year for which data are compiled, a financial institution must submit its complete loan/application register to the agency office specified in appendix A. Section 1003.5(a)(1) also provides that a financial institution shall retain a copy of its complete loan/application register for its records for at least three years. Part II of appendix A to Regulation C provides information concerning where financial institutions should submit their complete loan/application registers. Additional information concerning submission of the loan/application register is found in comments 4(a)–1.vi and –1.vii, 5(a)–1 and –2, and 5(a)–5 through –8. Comment 5(a)–2 provides that a financial institution that reports 25 or fewer entries on its loan/application register may submit the register in paper form. The Bureau proposed several changes to § 1003.5(a)(1).

Quarterly Reporting

The Bureau proposed that a financial institution with a high transaction volume report its HMDA data to the Bureau or appropriate agency on a quarterly, rather than an annual, basis. Proposed § 1003.5(a)(1)(ii) required that, within 60 calendar days after the end of each calendar quarter, a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year would submit its loan/application register containing all data required to be recorded pursuant to § 1003.4(f).[386] The

[383] The Bureau incorporates and relies on its prior description of the importance and usefulness of this data. *See* 79 FR 51731, 51809–10 (Aug. 29, 2014).

[384] A financial institution's obligation to *report* data is addressed below in the section-by-section analysis of § 1003.5(a).

[385] HMDA section 304(j)(6) requires that loan/application register information described in HMDA section 304(j)(1) for any year shall be maintained and made available, upon request, for three years.

[386] Currently, § 1003.4(a) requires that ''all reportable transactions shall be recorded, within thirty calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or

Continued

Bureau's proposal allowed for a delay in the effective date of proposed § 1003.5(a)(1)(ii) and stated that the Bureau was considering a delay of at least one year from the effective date of the other proposed amendments to Regulation C.

The Bureau received several comments on proposed § 1003.5(a)(1)(ii), including comments on the threshold for coverage under the provision and its effective date. For the reasons discussed below, the Bureau is adopting § 1003.5(a)(1)(ii) as proposed with several modifications and with an effective date of January 1, 2020. The Bureau also is adopting new § 1003.6(c)(2) to provide a safe harbor to protect financial institutions that satisfy certain conditions from liability for HMDA and Regulation C violations for errors and omissions in data submitted pursuant to § 1003.5(a)(1)(ii).

The requirement to submit data on a quarterly basis. Consumer advocate and researcher commenters supported the proposal to require quarterly reporting insofar as quarterly reporting would not adversely impact the accuracy of annual HMDA data released to the public and would expedite the FFIEC's annual release of HMDA data.[387] All but a few industry commenters opposed the proposal, with most comments questioning the benefits of quarterly reporting and raising concerns about burdens on financial institutions subject to the proposed quarterly reporting requirement, the accuracy of data submitted on a quarterly basis, and error thresholds applicable to quarterly submissions.

Most industry commenters asserted that institutions subject to the proposed quarterly reporting requirement would expend significant additional resources to comply with the requirement. These comments clearly conveyed that the need to ''clean'' HMDA data to maximize its accuracy before submission to regulators would be a significant driver of the increased operational burden associated with quarterly reporting. Although commenters suggested that most financial institutions currently review and correct their HMDA data throughout the year the data are collected, several stated that rigorous scrubbing typically is performed before the data are submitted to regulators by March 1 of the following year. A few commenters stated that performing this level of review four times each year instead of one would significantly increase costs to financial institutions and noted that these costs could change from quarter to quarter, depending on volume.

Several industry commenters also stated that HMDA data reported on a quarterly basis would be less accurate than data reported on an annual basis. A few commenters argued that systemic errors can take months to resolve and that the current annual reporting cycle maximizes opportunities to address systemic issues before the HMDA data are submitted to regulators. A few commenters noted that the need to ''update'' quarterly data previously submitted, whether to reflect the sale of a loan or to correct errors or omissions, would complicate submission for quarterly reporters and would introduce inaccuracies. Several commenters stated that, even with increased resources devoted to preparing quarterly submissions, 60 days after the close of the quarter would not provide sufficient time to properly scrub quarterly data prior to submission, especially if the Bureau were to finalize its proposal to require reporting of additional transactions and data. A few commenters expressed concern that errors or omissions in quarterly submissions would expose financial institutions subject to proposed § 1003.5(a)(1)(ii) to increased risk of violations under the agencies' accuracy requirements in determining HMDA compliance.

Industry commenters also argued that the significant burden of quarterly reporting would outweigh any benefits it might provide. Several commenters stated that annual reporting of HMDA data is sufficient to satisfy the purposes of HMDA. A few commenters stated that useful analyses cannot be performed with quarterly data, especially for purposes of fair lending enforcement. One commenter argued that, because only the largest lenders would be reporting quarterly, quarterly data would not provide a good ''community lending'' picture. One commenter noted that, with each quarter, the reduction in delay between a reportable event and the date it is reported that exists under the annual reporting scheme is decreased, and so the corresponding benefit of quarterly reporting is decreased. As discussed above, several commenters stated that quarterly reporting would decrease the accuracy of HMDA data submitted, not improve it as the Bureau suggested in the proposal. A few commenters expressed skepticism that quarterly reporting would significantly hasten the FFIEC's release of annual HMDA data, and several commenters asserted that quarterly reporting would provide limited or no benefit to the public and public officials, who would continue to have access to HMDA data on an annual basis only under the proposal.

The Bureau has considered the comments received and has determined that the benefits of quarterly reporting by large-volume financial institutions justify some degree of additional burden on these financial institutions. Quarterly reporting will provide regulators with more timely data, which will be of significant value for HMDA and market monitoring purposes. Currently, HMDA data may be reported as many as 14 months after final action is taken on an application or loan.[388] Although this delay decreases as the year progresses (*e.g.,* a loan originated in December is currently reported by March 1 of the following year), increasing the timeliness of HMDA data will provide meaningful benefits to various analyses by regulators. Timelier data will allow regulators to determine, in much closer to ''real time,'' whether financial institutions are fulfilling their obligations to serve the housing needs of communities in which they are located. Timelier identification of risks to local housing markets and troublesome trends by regulators will allow for more effective interventions or other actions by the agencies and other public officials. Quarterly data will allow for deeper and timelier analyses of the lending activities of large volume lenders. For example, in fair lending examinations, quarterly reporting will permit comparisons of recent data from the subjects of examinations and similar lenders. Further, timelier HMDA data will allow the agencies to not only better understand the market and identify trends and shifts that may warrant interventions, but also will provide data that will allow the agencies to sooner understand the impacts of prior interventions. For example, although the Bureau's Ability-to-Repay and Qualified Mortgage provisions went into effect in January 2014, data on loans subject to these provisions were not reported until March 2015. Timelier HMDA data would have enhanced the Bureau's understanding of the effects of those protections.

withdrawal of an application), on a register in the format prescribed in Appendix A of this part.'' The Bureau's proposal moved this requirement, with some revisions, to proposed § 1003.4(f). The Bureau is finalizing § 1003.4(f) as proposed with technical amendments.

[387] As discussed above in part II.B, the FFIEC currently makes available on its Web site aggregate and loan-level HMDA data. Currently, these data are made available in September of the year following the calendar year in which the data were collected.

[388] A loan originated on January 2, 2015 may not be reported until March 1, 2016.

Further, quarterly reporting would allow for the release of timelier data and analysis to the public. In its proposal, the Bureau noted that, although based on its analysis to date it believed that releasing HMDA data to the public on a quarterly basis may create risks to applicant and borrower privacy that would not be justified by the benefits of such release, it would evaluate options for the agencies' release of data or analysis more frequently than annually. Upon further consideration, the Bureau has determined that useful analyses of data submitted on a quarterly basis, or aggregated data, could be provided to the public in a manner that appropriately protects applicant and borrower privacy.[389] The Bureau intends to release analyses of HMDA data or aggregated HMDA data to the public more frequently than annually in such a privacy-protective manner. As aggregates of HMDA data collected by all reporting institutions during a given calendar year currently are not publicly available until September of the following year, the release of aggregate quarterly data or analysis would further the statute's purposes and deliver a direct disclosure benefit to the public.

The Bureau acknowledges the concerns industry commenters raised about burdens that could be imposed by the proposed quarterly reporting requirement. Based on the comments, the Bureau understands that these burdens would result mainly from a requirement that quarterly submissions achieve the degree of data accuracy the regulators currently require in annual submissions. To address this concern, the Bureau is adopting a quarterly reporting requirement, but is finalizing § 1003.5(a)(1)(i) and § 1003.5(a)(1)(ii) with modifications and adopting new § 1003.6(c)(2) to provide that quarterly submissions are considered preliminary submissions and to provide a safe harbor that protects a financial institution that satisfies certain conditions from being cited for violations of HMDA or Regulation C for errors and omissions in its quarterly submissions.

Under the final rule, within 60 calendar days after the end of each calendar quarter except the fourth quarter,[390] financial institutions subject to § 1003.5(a)(1)(ii) will submit the HMDA data that they are already required to record on their loan/application registers within 30 days after the end of each calendar quarter. Pursuant to new § 1003.6(c)(2), errors and omissions in the data submitted pursuant to § 1003.5(a)(1)(ii) will not be considered HMDA or Regulation C violations assuming the conditions that currently provide a safe harbor for errors and omissions in quarterly *recorded* data are satisfied.[391] By March 1 of the following year, quarterly reporters will submit their final annual HMDA data pursuant to § 1003.5(a)(1)(i), which will be subject to examination for HMDA and Regulation C compliance and required to satisfy the agencies' error thresholds. This annual submission will contain all reportable data for the preceding calendar year.

The Bureau is moving the certification requirement from proposed § 1003.5(a)(1)(iii) into adopted § 1003.5(a)(1)(i) to clarify that such certification is only required in connection with a financial institution's annual data submission, and is making other technical and conforming changes to § 1003.5(a)(1)(i) and § 1003.5(a)(1)(ii).[392] The final rule thus preserves the annual reporting structure of current Regulation C for all financial institutions reporting under HMDA and imposes an additional, quarterly submission requirement on large-volume institutions only. These additional submissions need only consist of the data a large-volume institution is already required to maintain, however, significantly limiting the burden imposed by the quarterly reporting requirement.[393]

The final rule provides the benefits of timelier data to the regulators without requiring quarterly reporters to apply to each quarterly submission the rigorous scrubbing typically performed on annual HMDA submissions. The Bureau has considered that potential inaccuracies in quarterly data submitted under the final rule may decrease the data's utility and reliability. Although a quarterly reporting requirement would ideally yield timelier and highly accurate data, the Bureau recognizes that minimizing burdens to financial institutions associated with quarterly reporting may require a tradeoff between these goals. Based on its examination experience, the Bureau believes that the typical degree of accuracy in quarterly recorded HMDA data maintained by most financial institutions will be sufficient for the kinds of analyses for which the Bureau anticipates quarterly data may be used.[394] The Bureau further believes that edit checks it is building into the HMDA data submission tool it is developing will decrease some types of inaccuracies in submissions.

As an alternative to the adopted approach, the Bureau considered requiring semiannual reporting rather than quarterly reporting. Under this approach, large volume reporters would submit their final HMDA data for the first and second quarters of the calendar year within 60 days after the end of the second quarter, and their final HMDA data for the third and fourth quarters by March 1 of the following year. These submissions would be subject to examination for HMDA compliance and the agencies' error thresholds. This approach would require financial institutions subject to § 1003.5(a)(1)(ii) to perform the more rigorous data review described by industry commenters only twice each year, rather than four times, reducing burden on

[389] At this time, the Bureau believes that loan-level data should not be released to the public more frequently than annually due to privacy concerns. Currently, dates are redacted from the modified loan/application register and the agencies' annual loan-level data release to reduce re-identification risk created by the disclosure of loan-level data. *See* 55 FR 27886, 27888 (July 6, 1990) (concerning the agencies' decision to release loan-level data to the public and stating that ''[a]n unedited form of the data would contain information that could be used to identify individual loan applicants'' and that the data would be edited prior to public release to remove the application identification number, the date of application, and the date of final action). Based on its analysis to date, the Bureau believes that disclosure of loan-level data with more granular date information than year of final action would create risks to applicant and borrower privacy that are not outweighed by the benefits of such disclosure.

[390] Sixty days after end of the fourth calendar quarter coincides with March 1, the date by which all financial institutions must submit their annual HMDA data pursuant to § 1003.5(a)(1)(i) as finalized. Financial institutions subject to § 1003.5(a)(1)(ii) will report their fourth quarter data as part of their annual submission. In its annual submission, a quarterly reporter will resubmit the data previously submitted for the first three calendar quarters of the year, including any corrections to the data, as well as its fourth quarter data.

[391] Currently, § 1003.6(b)(3) provides that ''[i]f an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the act or this part provided that the institution corrects or completes the information prior to submitting the loan/application register to its regulatory agency.'' Modifications to this provision and new § 1003.6(c)(2) are discussed below in the section-by-section analysis of § 1003.6(c).

[392] As discussed below, the Bureau also is modifying the certification provision in the final rule to clarify who may certify on behalf of a financial institution and to provide that the institution must certify to the completeness of the submission as well as to its accuracy.

[393] This approach also addresses concerns raised by a few industry commenters that sixty days is insufficient time after the close of the quarter for a financial institution to submit its quarterly data. Financial institutions must already record the data to be submitted under § 1003.5(a)(1)(ii) within thirty days after the calendar quarter.

[394] The Bureau believes that the accuracy levels typically found in quarterly recorded data likely result from the good-faith requirement set forth in current § 1003.6(b)(3) and the data review that many financial institutions perform year-round.

these institutions compared to the Bureau's proposal. Further, industry comments suggest that data submitted on a semiannual basis may contain fewer inaccuracies than data submitted on a quarterly basis. This alternative approach would not provide as timely data to the agencies as the quarterly reporting approach discussed above, however, reducing the utility of the data to the agencies as well as the disclosure benefit to the public.

To the extent that quarterly data contain errors and omissions, the Bureau believes these inaccuracies are unlikely to be significant enough to have a negative impact on the analyses the data will allow and that the risks of inaccurate data are outweighed by the benefits of timelier data. Although the approach adopted in the final rule reduces the likelihood that the quarterly reporting requirement will expedite the agencies' release of annual HMDA data as compared to the proposal,[395] it will nonetheless allow the Bureau to provide a direct disclosure benefit to the public in the form of periodic aggregate data or analysis, as described above. Based on the comments received, the Bureau has determined that the approach adopted in the final rule would limit burden on financial institutions subject to § 1003.5(a)(1)(ii) and that it best balances any burden with the benefits of more frequent HMDA reporting.

A few commenters raised operational questions concerning quarterly reporting, including how financial institutions reporting on a quarterly basis would report updates and corrections to previously-submitted quarterly data and whether they would be required to update and correct previously-submitted data with each quarterly submission. For example, these commenters suggested that quarterly reporters may be required to report the same loan repeatedly throughout the calendar year in order to correct errors in a previous quarterly submission or reflect the sale or repurchase of the loan.

A quarterly reporter is required to update a previously reported transaction in a subsequent quarterly submission if the new information is required to be recorded on the loan/application register pursuant to § 1003.4(f). Under the final rule, a financial institution required to comply with § 1003.5(a)(1)(ii) must submit, within 60 calendar days after the end of each calendar quarter except the fourth quarter, its quarterly loan/application register containing all data required to be recorded for that quarter pursuant to § 1003.4(f). Pursuant to § 1003.4(f), data must be recorded on the quarterly loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, sale of a covered loan in the same calendar year it is originated or purchased, or denial or withdrawal of an application). The sale or repurchase of a loan, if occurring in the first three quarters of the calendar year, must be reflected in the quarterly submission for the quarter in which the action was taken because it must be recorded on the quarterly loan/application register for that quarter pursuant to § 1003.4(f).[396]

Final § 1003.6(c)(2) provides that, if a quarterly reporter makes a good faith effort to report all data required to be reported pursuant to § 1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, inaccuracies or omissions in quarterly data submitted need not be corrected or completed until the financial institution submits it annual loan/application register pursuant to § 1003.5(a)(1)(i). Thus, for example, if a quarterly reporter makes a good faith effort to report income for a particular transaction accurately in its quarterly submission and discovers in a subsequent quarter that the reported amount was incorrect, it is not required to update the record for the transaction until it submits its annual loan/application register pursuant to § 1003.5(a)(1)(i).

The Bureau received no comments on proposed comment 5(a)–1. The Bureau is adopting comment 5(a)–1 as proposed, modified to conform to § 1003.5(a)(1)(ii) as finalized and to add two new subsections clarifying how a surviving or newly formed financial institution's obligation to report on a quarterly basis under § 1003.5(a)(1)(ii) is determined for the calendar year of the merger or acquisition and the calendar year after the merger or acquisition.

The Bureau received no comments on proposed comment 5(a)–2. The Bureau is adopting proposed comment 5(a)–2 as modified in two ways. First, comment 5(a)–2 as adopted requires that, if the appropriate Federal agency for a financial institution subject to § 1003.5(a)(1)(ii) changes, the financial institution must identify the new appropriate Federal agency in its quarterly submission pursuant to § 1003.5(a)(1)(ii) beginning with its submission for the quarter of the change, unless the change occurs during the fourth quarter, in which case the financial institution must identify the new agency in its annual submission pursuant to § 1003.5(a)(1)(i). This change aligns the requirement for quarterly submissions with the requirement for annual submissions and conforms to § 1003.5(a)(1)(ii) as adopted. The Bureau has also modified comment 5(a)–2 to provide illustrative examples.

The threshold for coverage under § 1003.5(a)(1)(ii). The Bureau proposed that the quarterly reporting requirement under proposed § 1003.5(a)(1)(ii) apply to a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year. The Bureau received no comments from consumer advocates on the proposed threshold for quarterly reporting.

The Bureau received a few industry comments on the proposed threshold. One industry commenter suggested that the Bureau should impose a $10 billion asset threshold, instead of a transaction-based threshold, to align the quarterly reporting requirement with the Bureau's supervisory authority. Another industry commenter suggested that the threshold should be lowered to 50,000 transactions in the preceding calendar year so as to increase the amount of quarterly data available for analysis, and yet another suggested that all HMDA reporters should be required to report on a quarterly basis to facilitate the earlier release of the annual HMDA data by the agencies. One industry commenter suggested that the threshold should include originated covered loans only (not applications or purchased loans), though offered no rationale for

[395] As explained in the proposal, the Bureau believed that the proposed quarterly reporting requirement would reduce reporting errors and allow it to process data throughout the year. *See* 79 FR 51731, 51811 (Aug. 29, 2014). The Bureau believed that these benefits of quarterly reporting would reduce the time currently required to edit and process annual HMDA data, which would expedite the release of the annual data to the public. Because the final rule provides that data submitted quarterly need only be preliminary data and a quarterly reporter will resubmit all previously submitted quarterly data with its annual submission, the Bureau now believes that the quarterly reporting requirement may not significantly reduce the time needed to process the annual data. The Bureau notes, however, that it believes improvements to the submission process, including a requirement that edit checks currently performed by the processor after submission are performed by the financial institution prior to submission, will reduce the time needed to process the annual HMDA data and will thus expedite the release of the annual data to the public.

[396] *See* § 1003.4(f); comment 4(a)(11)–9 (where a financial institution originates a covered loan in one quarter and sells it in a subsequent quarter of the same calendar year, the institution must record the purchaser on the loan/application register for the quarter in which the covered loan was sold); comment 4(a)–6 (clarifying that a repurchase is reported as a purchase).

this recommendation. Two industry comments stated that the Bureau's estimate of the number of institutions that would be covered by the proposed threshold was inaccurate because it did not take into account the Bureau's proposal to expand transactional coverage to include open-end lines of credit and commercial-purpose loans. One of these comments, submitted by several national trade associations, stated that the associations' members reported that mandatory open-end line of credit reporting would double or triple the number of reportable transactions.

For the reasons described below, the Bureau is adopting § 1003.5(a)(1)(ii) with modifications to the proposed threshold to exclude purchased covered loans from the threshold calculation and to lower the threshold from at least 75,000 transactions in the preceding calendar year to at least 60,000 transactions in the preceding calendar year. The Bureau has determined that it is appropriate to exclude purchased covered loans from the quarterly reporting threshold due to changes to the currently-applicable FFIEC guidance concerning reporting of repurchased loans that it is adopting herein.[397] The Bureau understands that loans are repurchased under a variety of circumstances and arrangements, some of which are very common. The Bureau lacks data concerning repurchase activity sufficient to allow it to estimate the impact of a quarterly reporting threshold that takes repurchases into consideration, however, and is concerned that inclusion of repurchases in the quarterly reporting threshold calculation could conceivably significantly increase the number of financial institutions that would be required to comply with § 1003.5(a)(1)(ii). Rather than excluding only repurchased loans from the threshold calculation, which would require financial institutions to identify repurchased loans in their HMDA data and would thus add burden, the final rule excludes all purchases from the threshold. Institutions that are required to submit their HMDA data on a quarterly basis under § 1003.5(a)(1)(ii) will include purchased covered loans in the quarterly data they submit, but purchased covered loans will not be considered in determining whether a financial institution must comply with § 1003.5(a)(1)(ii).

Based on 2013 HMDA data, a threshold of at least 60,000 transactions, excluding purchases, would have required 29 financial institutions to report on a quarterly basis in 2014. In 2013, these 29 institutions reported approximately 49 percent of all transactions reported under HMDA.[398] The Bureau notes that market fluctuations may influence the number of financial institutions that are required to comply with § 1003.5(a)(1)(ii) from year to year. For example, based on preliminary HMDA data submitted for 2014, a threshold of at least 60,000 transactions, excluding purchases, would have required only approximately 19 financial institutions to report on a quarterly basis in 2015. The preliminary data suggest that these institutions reported approximately 37 percent of all transactions reported under HMDA for 2014. The Bureau recognizes that the percentage of the market reflected in quarterly reported data may vary from year to year and has determined that a 60,000 transaction volume threshold should result in data sufficient to realize the benefits of a quarterly reporting requirement.

The Bureau believes that the requirement to report open-end lines of credit under the final rule is unlikely to have a significant impact on the number of financial institutions that must comply with § 1003.5(a)(1)(ii). As discussed elsewhere in this document, the Bureau has faced challenges in analyzing the impact of the mandatory reporting of open-end lines of credit required under the final rule on financial institutions' HMDA-reportable transaction volume.[399] Using estimates of the number of consumer-purpose open-end line of credit originations and applications in 2013,[400] the Bureau's analysis suggests that, had these originations and applications been required to be reported for 2013, one additional financial institution would have become a quarterly reporter in 2014, as compared to the number of institutions that would have become quarterly reporters without mandatory reporting of open-end line of credit originations and applications.[401] Based on these estimates as applied to 2013 HMDA data, the Bureau believes that, although mandatory reporting of consumer-purpose open-end lines of credit and applications will increase HMDA-reportable transaction volumes for many financial institutions, and may increase these volumes significantly for some financial institutions, this increase is unlikely to significantly increase the number of financial institutions required to comply with § 1003.5(a)(1)(ii). Further, the Bureau believes that relatively few dwelling-secured, commercial-purpose open-end lines of credit are used for home purchase, home improvement, or refinancing purposes.[402] The Bureau thus expects that reporting these transactions will not significantly increase the number of transactions reported by financial institutions and, accordingly, will not significantly increase the number of financial institutions that must comply with § 1003.5(a)(1)(ii).

The final rule does not base the threshold for quarterly reporting on a financial institution's asset size, as recommended by a commenter. The central goal of the quarterly reporting requirement is to provide the agencies with timelier HMDA data in a quantity sufficient to perform meaningful analyses. A transaction-based threshold limits the imposition of costs associated with quarterly reporting to those institutions with the largest transaction volumes in order to minimize the number of financial institutions subject to the requirement while maximizing the volume of data reported on a quarterly basis. An asset-based threshold cannot guarantee such a relationship between the number of affected institutions and the quantity of data submitted on a quarterly basis.

[397] The Bureau is adopting comment 4(a)–6 to require the reporting of most repurchases as purchased loans regardless of when the repurchase occurs. As adopted, comment 4(a)–6 eliminates the exception for reporting repurchases occurring in the same calendar year as origination that currently exists under FFIEC guidance.

[398] These numbers align with those based on 2012 HMDA data and the proposed 75,000 transaction threshold included in the Bureau's proposal. *See* 79 FR 51731, 51811 (Aug. 29, 2014) (noting that, based on 2012 HMDA data, the 75,000 transaction threshold proposed would have required 28 financial institutions to report on a quarterly basis in 2013 and that, in 2012, these 28 institutions reported approximately 50 percent of all transactions reported under HMDA).

[399] *See* section-by-section analyses for § 1003.2(g), (o), § 1003.3(c)(10), and part VII.

[400] As discussed in part VII, these estimates are based on 2013 HMDA data, 2013 Call Report data, and Consumer Credit Panel data. Due to the limited data available, these estimates rely on several assumptions.

[401] This analysis assumes that these institutions did not voluntarily report open-end line of credit originations and applications in 2013.

[402] As discussed in the section-by-section analysis of § 1003.3(c)(10), the final rule maintains coverage of commercial-purpose transactions generally at its existing level. Section 1003.3(c)(10) does expand coverage of dwelling-secured commercial-purpose lines of credit, which are not currently reported, by requiring them to be reported if they primarily are for home purchase, home improvement, or refinancing purposes, however. As discussed above, the Bureau has faced challenges estimating institutions' open-end lending volume given limitations in publicly available data sources. For example, it is difficult to estimate commercial-purpose open-end lending volume because available data sources do not distinguish between consumer- and commercial-purpose lines of credit.

Effective date of § 1003.5(a)(1)(ii). The Bureau received no consumer advocate comments and very few industry comments on its request for comment as to whether and how long it should delay the effective date of proposed § 1003.5(a)(1)(ii). Industry commenters recommended a delay of either one or two years from the effective date of the other amendments to Regulation C.

The Bureau is adopting an effective date of January 1, 2020 for § 1003.5(a)(1)(ii). This delay is to permit financial institutions subject to the quarterly reporting requirement time to implement amended Regulation C and to allow for two annual reporting cycles under the amended rule before quarterly submissions are required. Financial institutions that report for 2019 at least 60,000 covered loans and applications, combined, excluding purchased covered loans, must comply with § 1003.5(a)(1)(ii) in 2020. Financial institutions subject to § 1003.5(a)(1)(ii) in 2020 will first report quarterly data under this provision by May 30, 2020.

Elimination of Paper Reporting

The Bureau proposed to delete comment 5(a)–2, which allows a financial institution that reports 25 or fewer entries on its loan/application register to submit the register in paper form, and to clarify in proposed § 1003.5(a)(1) that the register must be submitted in electronic format in accordance with instructions in appendix A. The Bureau received no comments from consumer advocates on this proposal and very few comments from industry. One industry commenter supported the proposal. A few industry commenters opposed the proposal. The majority of these commenters suggested that the option to report on paper should be available until the Bureau builds an improved data submission tool. One industry commenter argued that it would be cost prohibitive for a financial institution to purchase new software to report a few transactions per month.

For the reasons described below, the Bureau is finalizing its proposal to delete comment 5(a)–2. In recent years, very few financial institutions have submitted their loan/application registers in paper form. Further, the Bureau is finalizing its proposal to exclude from the definition of financial institution any institution that originated less than 25 closed-end mortgages loans and less than 100 open-end lines of credit,[403] so only a financial institution that originated exactly 25 closed-end mortgage loans and received no other applications would be eligible to submit its register in paper form under amended Regulation C were this option to remain available. The Bureau is developing an improved HMDA data submission system and tools to assist smaller financial institutions with data entry. The Bureau is confident that these developments will reduce even further any need for a financial institution to submit its HMDA data in paper form.

As discussed in part VI below, most of § 1003.5(a) is effective January 1, 2019 and applies to data collected and recorded in 2018 pursuant to this final rule.[404] However, the Bureau will intake and process HMDA data on behalf of the agencies using the improved web-based submission tool it is developing beginning with financial institutions' 2017 HMDA data submission. Data collected and recorded in 2017 pursuant to current Regulation C will be reported by March 1, 2018 pursuant to current § 1003.5(a). The final rule's amendments to supplement I effective January 1, 2018 generally maintain the current commentary to § 1003.5(a) with respect to the reporting of data collected in 2017 and reported in 2018 but, because the improved submission tool that financial institutions will use to submit their 2017 HMDA data will not accept loan/application registers in paper form, the Bureau is deleting comment 5(a)–2 effective January 1, 2018.

Retention of Annual Loan/Application Register in Electronic Format

Section 1003.5(a)(1) requires that a financial institution shall retain a copy of its complete loan/application register for three years, but current Regulation C is silent concerning the formats in which the complete loan/application register may be retained. The Bureau proposed comment 5(a)–4 to clarify that retention of the loan/application register in electronic format is sufficient to satisfy the requirements of § 1003.5(a)(1).

The Bureau received no consumer advocate comments concerning proposed comment 5(a)–4. The Bureau received very few industry comments concerning proposed comment 5(a)–4, but all supported the proposal. The Bureau adopts comment 5(a)–4 as proposed, modified to clarify that the obligation to retain the loan/application register applies only to a financial institution's annual data submitted pursuant to § 1003.5(a)(1)(i).

Submission Procedures

As stated in its proposal, as part of its efforts to improve and modernize HMDA operations, the Bureau is developing improvements to the HMDA data submission process. The Bureau proposed to reorganize parts I and II of appendix A and portions of the commentary so that instructions relating to data submission are found in one place in the regulation. Specifically, the Bureau proposed to: Delete the content of part II of appendix A and comment 5(a)–1; move the portion of comment 4(a)–1.vi concerning certification to proposed § 1003.5(a)(1)(iii); and incorporate the pertinent remaining portion of comment 4(a)–1.vi and comments 4(a)–1.vii and 5(a)–7 and –8 into proposed instructions 5(a)–2 and –3 in appendix A and delete the remaining portions of these comments. The Bureau proposed new instruction 5(a)–1 in appendix A to provide procedural and technical information concerning data submission. The Bureau did not receive comment on these proposals.

The Bureau noted in its proposal that, as part of its efforts to improve and modernize HMDA operations, it was considering various improvements to the HMDA data submission process. The Bureau received a few industry comments concerning data submission. A few commenters urged the Bureau to adopt a web-based submission tool that is accessible by multiple work stations and users within a financial institution, rather than a downloadable tool that would reside on a single work station. Commenters also suggested that the tool automatically identify and code inapplicable fields so that, for example, if a loan is identified on the loan/application register as a commercial-purpose loan, all data fields not required to be reported for commercial-purpose loans would automatically be populated with the code for ''not applicable.'' Finally, a few commenters stated that the tool should be secure and should not allow regulators access to any data until the data is submitted by the financial institution.

As will be described in more detail in separately published procedures, the Bureau is developing a Web-based submission tool that financial institutions will use to submit their HMDA data to their regulators. The Bureau anticipates that this submission tool will be accessible from multiple work stations and will perform edit checks on HMDA data prior to submission. The Bureau believes that this submission tool will significantly improve the data submission process. The Bureau does not anticipate that this

[403] *See* § 1003.2(g).

[404] Section 1003.5(a)(1)(ii) is effective January 1, 2020.

submission tool will include a data entry function, and therefore it would not have capacity to automatically identify and code inapplicable fields, as recommended by some commenters. The Bureau believes that, at this time, the costs of a Web-based data entry tool outweigh the benefits such a tool could provide. The Bureau is developing a tool to assist smaller financial institutions with data entry, but the Bureau anticipates that it will not be Web-based.

Effective January 1, 2019, the Bureau is deleting appendix A from Regulation C and is instead separately publishing procedures for the submission of HMDA data.[405] The Bureau is adopting modifications to § 1003.5(a)(1)(i) and (ii) and new § 1003.5(a)(4) to clarify that financial institutions submit HMDA data to the appropriate Federal agency for the financial institution. The Bureau is also adopting modifications to the certification requirement in § 1003.5(a)(1)(i).[406] These modifications require that a financial institution certify to the completeness of the HMDA data submitted as well as to their accuracy in order to reflect the obligation to report both accurate and complete data, and clarify who may certify on behalf of a financial institution in order to align the requirement with current practice.

As discussed in part VI below, most of § 1003.5(a) is effective January 1, 2019 and applies to data collected and recorded in 2018 pursuant to this final rule.[407] However, the Bureau will intake and process HMDA data on behalf of the agencies using the improved Web-based submission tool it is developing beginning with financial institutions' 2017 HMDA data submission. Data collected and recorded in 2017 pursuant to current Regulation C will be reported by March 1, 2018 pursuant to current § 1003.5(a). The final rule's amendments to supplement I effective January 1, 2018 generally maintain the current commentary to § 1003.5(a) with respect to the reporting of data collected in 2017 and reported in 2018, but operation of this improved submission tool requires that current comment 5(a)–1 is deleted effective January 1, 2018.[408] Current comments 5(a)–3 and –4 have been incorporated elsewhere in the final rule as appropriate and are also deleted from supplement I effective January 1, 2018. In addition, part II of appendix A to current Regulation C is revised effective January 1, 2018 to provide updated instructions relating to the reporting of 2017 HMDA data.

Finally, the Bureau received several identical comments from employees of one financial institution suggesting that the Bureau change the date by which annual HMDA data must be submitted pursuant to § 1003.5(a)(1)(i) to allow financial institutions additional time to prepare HMDA data for submission. The final rule retains the March 1 deadline for submitting annual HMDA data pursuant to § 1003.5(a)(1)(i). Postponing this deadline would necessarily delay the release of annual HMDA data to the public. The Bureau has determined that any benefits to financial institutions that would result from additional time to prepare HMDA data for submission are outweighed by the costs of such an approach to the public disclosure goals of the statute.

5(a)(1)(iii)

The Bureau is adopting new § 1003.5(a)(1)(iii) to provide that, when the last day for submission of data prescribed under § 1003.5(a)(1) falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.[409] This is consistent with the approach taken by the agencies when this situation has arisen in the past.[410]

5(a)(2)

The Bureau did not propose changes or solicit feedback regarding § 1003.5(a)(2) in the proposal. Current § 1003.5(a)(2) provides that a subsidiary of a bank or savings association shall complete a separate loan/application register and submit it directly or through its parent to the agency of its parent. The Bureau is making non-substantive changes to § 1003.5(a)(2) to clarify that a financial institution that is a subsidiary of a bank or savings association shall complete a separate loan/application register and submit it directly or through its parent to the appropriate Federal agency for its parent at the address identified by the agency.

5(a)(3)

The Bureau proposed § 1003.5(a)(3) to require that when an institution reports its data, the institution shall provide with each covered loan or application its Legal Entity Identifier (LEI) issued by a utility endorsed by the LEI Regulatory Oversight Committee or a utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system. Regulation C currently requires financial institutions to provide a Reporter's Identification Number (HMDA RID) in their transmittal sheet and loan/application register. The HMDA RID consists of an entity identifier specified by the financial institution's appropriate Federal agency combined with a code that designates the agency. Each Federal agency chooses the entity identifier that its financial institutions would use in reporting their HMDA data. Currently, the Research Statistics Supervision and Discount (RSSD) number is used by institutions supervised by the Board and depository institutions supervised by the Bureau; the Federal Tax Identification number is used by nondepository institutions supervised by agencies other than the Board; the charter number is used by depository institutions supervised by the National Credit Union Administration (NCUA) and the OCC; and the certificate number is used by depository institutions supervised by the FDIC. For the reasons discussed below, the Bureau is adopting § 1003.5(a)(3) as proposed. The Bureau is also incorporating material from proposed § 1003.5(a)(2) in appendix A, as discussed below.

The Bureau solicited feedback on whether the LEI would be a more appropriate entity identifier than the current HMDA RID and also whether other identifiers, such as the RSSD number or Nationwide Mortgage Licensing System & Registry identifier (NMLSR ID), would be an appropriate alternative to the proposed LEI. Several commenters opposed the requirement for financial institutions to obtain an LEI, mostly citing the cost associated with obtaining an LEI and the availability of alternative identifiers. The Bureau acknowledged in the proposal that requiring financial institutions to obtain an LEI would impose some costs. However, because the LEI system is based on a cost-recovery model, the cost associated with obtaining an LEI could decrease as the

[405] *See* final § 1003.5(a)(5) (providing that procedures for the submission of data pursuant to § 1003.5(a) are published on the Bureau's Web site).

[406] The Bureau proposed to move the certification requirement from the transmittal sheet to proposed § 1003.5(a)(1)(iii). As discussed above, in the final rule, the Bureau is moving the certification requirement to § 1003.5(a)(1)(i) to clarify that the certification is only required in connection with a financial institution's annual data submission pursuant to that paragraph.

[407] Section 1003.5(a)(1)(ii) is effective January 1, 2020.

[408] As discussed above, comment 5(a)–2 also is deleted effective January 1, 2018.

[409] As discussed above, the certification requirement set forth in proposed § 1003.5(a)(1)(iii) is moved into final § 1003.5(a)(1)(i).

[410] For example, in 2015, March 1 fell on a Sunday and the reporting deadline for 2014 HMDA data was moved to March 2. Fed. Fin. Insts. Examination Council, CRA/HMDA Reporter, *Calendar Year 2014 Initial Submission Deadline,* at 1 (Jan. 2015), available at *http://www.ffiec.gov/hmda/pdf/15news.pdf.*

LEI identifier is used more widely. Despite the cost, the Bureau believes that the benefit of all HMDA reporters using an LEI may justify the associated costs. An LEI could improve the ability to identify financial institution reporting the data and link it to its corporate family. Facilitating identification of a financial institution's corporate family could help data users identify possible discriminatory lending patterns and assist in identifying market activity and risks by related companies.

Some commenters suggested that instead of the proposed LEI, the Bureau should consider requiring either the current HMDA RID, NMLSR ID, Federal Tax Identification number, or a Bureau-created unique identifier for entities. These suggested alternatives may have some merit, but they pose concerns that would make data aggregation, validation, and analyses difficult for users. The current HMDA RID varies across each Federal agency and there is a lack of consistency in the availability of the financial institutions corporate information when researching a financial institution's corporate information using the HMDA RID. For example, a search using the FDIC certificate number may only provide the bank holding company and financial institution affiliates, but may not provide other corporate information. The NMLSR ID would not pose much additional burden on industry because most institutions that originate loans are already assigned unique identifier by the NMLS. However, the NMLSR does not contain consistent information regarding corporate information. For example, parent company and affiliate information are not readily available in the NMLS. The Federal Tax Identification Number would also not pose additional burden on industry because financial institutions would already have one. However, as the Bureau explained in the proposal, there is no mechanism to link nondepository institutions identified by a Federal Tax Identification Number to related companies. All of the suggested alternatives above would still result in a lack of information to enable users to link corporate information to the financial institution reporting HMDA data. Accordingly, the Bureau is adopting § 1003.5(a)(3) to require an institution to provide its LEI with its submission. As mentioned in the section-by-section analysis of § 1003.4(a)(1)(i), the Bureau is making a technical change and moving proposed § 1003.5(a)(3)(i) and (ii) to § 1003.4(a)(1)(i)(A)(*1*) and (*2*) for ease of reference.

The Bureau concludes that requiring use of the LEI will improve the ability to identify the legal entity that is reporting data and to link it to its corporate family. For these reasons, pursuant to HMDA section 305(a), the Bureau is adopting § 1003.5(a)(3) as proposed. This requirement is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith. By facilitating identification, this requirement will help data users achieve HMDA's objectives of identifying whether financial institutions are serving the housing needs of their communities, as well as identifying possible discriminatory lending patterns. This requirement could also assist in identifying market activity and risks by related companies.

The Bureau proposed § 1003.5(a)(4) to require a financial institution to report its parent company, if any, when reporting its data. Currently, Regulation C requires financial institutions to report their parent company, if any, in the transmittal sheet as provided in appendix A. Information about a financial institution's parent company helps ensure that the financial institution's submission can be linked with that of its corporate parent. One commenter suggested that the name and LEI of the parent company should be provided by the financial institution reporting data because financial institutions that submit HMDA data may be affiliated with large financial institutions. This commenter stated that the lack of information around parent company affiliations can make it difficult to accurately analyze lending patterns. The Bureau has determined that requiring the parent company of a financial institution to obtain an LEI would not be appropriate. Requiring the parent company to obtain an LEI specifically for HMDA purposes, except if the parent company is also HMDA reporter, and requiring the financial institution to submit its parent company's LEI with its HMDA data submission would be an unnecessary additional burden because, once the LEI is fully implemented, information regarding parent company is expected to become available.[411] Therefore, the Bureau does not believe that the benefit of requiring parent information justifies the burden since information about parent company most likely will be available through an alternative source. Accordingly, the Bureau will not require a financial institution to provide its parent information, including the parent's LEI, and therefore is withdrawing the requirement in proposed § 1003.5(a)(4) that a financial institution shall identify its parent company, if any.

The Bureau also proposed comment 5(a)–3 to explain that the parent company to be identified by the financial institution pursuant to § 1003.5(a)(3) is the entity that holds or controls an ownership interest in the financial institution that is greater than 50 percent. One industry commenter suggested that the Bureau should explain which parent should be identified by the financial institution. This commenter added, however, that they do not see the benefit that information about the parent company would provide. As mentioned above, once the LEI is fully implemented, information about parent company is expected to become available and therefore, the Bureau will not require a financial institution to identify its parent. Consequently, the Bureau is modifying comment 5(a)–3 to remove parent company.

Additionally, the Bureau is moving the instructions to 5(a)(2) in proposed appendix A and is incorporating it into § 1003.5(a)(3) because of the removal of appendix A from the final rule, as explained in the section-by-section analysis of appendix A below. Pursuant to its authority under section HMDA 305(a), the Bureau is also adding certain information related to the data submission that is currently provided on an institution's transmittal sheet, as illustrated in current appendix A, to § 1003.5(a)(3). The Bureau believes this will aid in the analyses of HMDA data and assist agencies in the supervision of financial institutions.

5(a)(4)

As discussed in the section-by-section analysis of § 1003.5(a)(3) above, the Bureau is withdrawing proposed § 1003.5(a)(4). In its place, the Bureau is adopting new § 1003.5(a)(4) to clarify that, for purposes of § 1003.5(a), ''appropriate Federal agency'' means the appropriate agency for the financial institution as determined pursuant to HMDA section 304(h)(2) or, with respect to a financial institution subject to the

[411] *See generally* Fin. Stability Bd., *A Global Legal Entity Identifier for Financial Markets* 38–39 (June 8, 2012), *http://www.financialstabilityboard.org/wp-content/uploads/r_120608.pdf?page_moved=1* (including a recommendation on LEI reference data relating to ownership; Fin. Stability Bd., LEI Implementation Group, *Fourth Progress Notes on the Global LEI Initiative* 4 (Dec. 11, 2012), *http://www.financialstabilityboard.org/wp-content/uploads/r_121211.pdf?page_moved=1* (noting that the LEI Implementation Group is developing proposals for additional reference data on the direct and ultimate parent(s) of legal entities and on relationship data more generally).

Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), the Bureau. This paragraph reflects the regulatory structure in place since the Dodd-Frank Act became effective, as first described in the FFIEC's January 2012 CRA/HMDA Bulletin.[412]

5(a)(5)

As described above,[413] effective January 1, 2019, the Bureau is deleting appendix A from Regulation C and is instead separately publishing procedures for the submission of HMDA data. The Bureau is adopting new § 1003.5(a)(5) to identify where these procedures will be published.

5(b) Public Disclosure of Statement

Under Regulation C as originally promulgated, the disclosure statement was the means by which financial institutions made available to the public the aggregate data required to be disclosed under HMDA section 304.[414] At present, the FFIEC prepares an individual disclosure statement for each financial institution using the HMDA data submitted by the institution for the preceding calendar year.

5(b)(1)

HMDA section 304(k) requires the FFIEC to make available a disclosure statement for each financial institution required to make disclosures under HMDA section 304.[415] Section 1003.5(b)(1) of Regulation C requires that the FFIEC prepare a disclosure statement for each financial institution based on the data each financial institution submits on its loan/application register. The Bureau proposed to modify § 1003.5(b)(1) to clarify that, although some financial institutions would report on a quarterly basis under proposed § 1003.5(a)(1)(ii), disclosure statements for these financial institutions would be based on all data submitted by each institution for the preceding calendar year. The Bureau also proposed to replace the word ''prepare'' with ''make available'' in § 1003.5(b)(1).

The Bureau received no comments on proposed § 1003.5(b)(1). Therefore, the Bureau adopts this provision generally as proposed, with one modification to clarify that disclosure statements made available in 2018 are based on a financial institution's annual 2017 data submitted pursuant to current § 1003.5(a), and that disclosure statements made available beginning in 2019 are based on a financial institution's annual data submitted pursuant to § 1003.5(a)(1)(i), not data submitted on a quarterly basis pursuant to § 1003.5(a)(1)(ii).

As discussed in its proposal,[416] the Bureau believes that advances in technology may permit, for example, the FFIEC to produce an online tool that would allow users of the tool to generate disclosure statements. It is the Bureau's interpretation that the FFIEC's obligation under HMDA section 304(k) would be satisfied if the FFIEC produced such a tool, which in turn would produce disclosure statements upon request. Further, pursuant to its authority under HMDA section 305(a), the Bureau believes that permitting the FFIEC to produce a tool that allows members of the public to generate disclosure statements is necessary and proper to effectuate the purposes of HMDA and to facilitate compliance therewith.

5(b)(2)

HMDA section 304(k)(1) requires that, in accordance with procedures established by the Bureau, a financial institution shall make its disclosure statement available to the public upon request no later than three business days after it receives the statement from the FFIEC. HMDA section 304(m) provides that a financial institution shall be deemed to have satisfied the public availability requirements of section 304(a) if it compiles the information required at the home office of the institution and provides notice at the branch locations specified in HMDA section 304(a) that such information is available from the home office upon written request. Section 1003.5(b)(2) of Regulation C requires that each financial institution make its disclosure statement available to the public in its home office within three business days of receiving it. In addition, § 1003.5(b)(3) requires that a financial institution must either (1) make the statement available to the public in at least one branch office in each other MSA and each other MD where the institution has offices or (2) post the address for sending written requests for the disclosure statement in the lobby of each branch office in each other MSA and each other MD and provide a copy of the disclosure statement within 15 calendar days of receiving a written request.

The Bureau proposed to require a financial institution to make its disclosure statement available to the public by making available a notice that clearly conveys that the disclosure statement may be obtained on the FFIEC Web site and that includes the FFIEC's Web site address. The Bureau proposed a new comment 5(b)–3 to provide an example of notice content that would satisfy the requirements of proposed § 1003.5(b)(2). The Bureau also proposed to modify comment 5(b)–2 to conform to proposed § 1003.5(b)(2) and to allow a financial institution to provide the proposed notice in paper or electronic form. For the reasons discussed below, the Bureau is adopting § 1003.5(b)(2) as proposed with clarifying modifications.

The Bureau received several comments from industry concerning proposed § 1003.5(b)(2). Most of these comments supported the proposal. Many industry commenters stated that they had never or rarely received a request for their disclosure statements. The one consumer advocate that commented on proposed § 1003.5(b)(2) also supported the proposal.

Two industry commenters suggested that, because disclosure statements are available on the FFIEC Web site, requiring financial institutions to provide members of the public seeking HMDA data with the notice under proposed § 1003.5(b)(2) was unnecessary and duplicative. One of these commenters suggested that, as an alternative to the notice required under proposed § 1003.5(b)(2), the Bureau should revise the posted lobby notice required pursuant to § 1003.5(e) to include text referring members of the public to the FFIEC Web site to obtain the institution's HMDA data. Although the final rule relieves financial institutions of the obligation to provide the disclosure statement directly to the public, the Bureau has determined that provision of the notice required under § 1003.5(b)(2) to a member of the public seeking a financial institution's disclosure statement is necessary to ensure that she is clearly informed of where to obtain it. Currently, a member of the public seeking a disclosure statement from a financial institution would leave the institution with the data in hand. As amended, § 1003.5(b)(2) requires that the individual take an additional step to

[412] Fed. Fin. Insts. Examination Council, CRA/HMDA Reporter, *2011 HMDA Panel Changes Resulting from Dodd-Frank Act*, at 1–3 (Jan. 2012), *available at http://www.ffiec.gov/hmda/pdf/11news.pdf*.

[413] *See* section-by-section analysis of § 1003.5(a)(1). *See also* section-by-section analysis of appendix A.

[414] 41 FR 23931, 23937–38 (June 14, 1976).

[415] HMDA section 304(k)(1)(A) provides that a financial institution ''shall make a disclosure statement available, upon request, to the public no later than 3 business days after the institution receives the statement from the Federal Financial Institutions Examination Council.''

[416] 79 FR 51731, 51841 (Aug. 29, 2014).

obtain the data—visit the Bureau's Web site—but provides that she leaves the institution with the specific information needed to do so.

Another industry commenter opposed the maintenance of disclosure statements on a government Web site, stating that it is an inefficient use of government resources. The Bureau disagrees. The government has played a critical role in disseminating HMDA data to fulfill the purposes of the statute since 1980, when Congress amended HMDA to require the FFIEC to implement a system to facilitate access to HMDA data required to be disclosed under HMDA section 304.[417] For the reasons given in the proposal, the Bureau concludes that the FFIEC's use of a Web site to publish HMDA data satisfies this statutory obligation and that this means of providing access to HMDA data is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith.[418] The Bureau believes that a significant portion of HMDA data used by the public and public officials is obtained from the FFIEC's Web site, rather than directly from financial institutions.

One other industry commenter opposed the proposal, arguing that eliminating the option to obtain data directly from a financial institution, and instead requiring a member of the public seeking a financial institution's disclosure statement to obtain it online, would impose undue burden on some members of the public. This commenter argued that a substantial portion of the public does not have access to the internet or does not know how to use it. The commenter suggested that this population is likely largely comprised of low-income minorities, some middle-aged women, and seniors, with the result that the Bureau's proposal may disproportionately impact vulnerable groups. The commenter also asserted that it is significantly more inconvenient and expensive for a member of the public seeking a disclosure statement to locate it online, download it, and print it than it is to obtain a copy of a printed disclosure statement at a financial institution's home or branch office.

Available data suggests that approximately 99 percent of Americans have access to broadband internet.[419] Although the Bureau recognizes that accessing data online is not without barriers for some members of the public and that broadband speeds vary,[420] the Bureau believes that the vast majority of members of the public seeking HMDA data should be able to readily access HMDA disclosure statements online with minimum inconvenience, if any. As discussed in the Bureau's proposal, such inconvenience is not greater than, and is likely less than, the potential inconvenience of receiving a disclosure statement on a floppy disc or other electronic data storage medium which may be used with a personal computer, as is expressly contemplated by HMDA section 304(k)(1)(b). In fact, the Bureau believes that, for most HMDA users, accessing disclosure statements online will be much more convenient than contacting individual financial institutions to request the data. Further, because members of the public are not currently entitled to printed disclosure statements free of charge, § 1003.5(b)(2) as adopted should not increase monetary costs to members of the public desiring a disclosure statement in printed form.[421] Although there may be members of the public that are adversely affected by the elimination of the right to obtain a disclosure statement directly from a financial institution,[422] the Bureau has determined that the burden to financial institutions associated with the provision of disclosure statements directly to members of the public upon request is not justified by any benefit to the current disclosure statement dissemination scheme.

The Bureau is adopting § 1003.5(b)(2) as proposed with three modifications. Reference to making the disclosure statement available to the public is eliminated in order to clarify that a financial institution must only make the notice described available to the public. This paragraph is also modified to clarify that the notice must only be made available in branch offices physically located in a MSA or MD. Finally, this paragraph is modified to reflect that the Bureau will publish the disclosure statements on the Bureau's Web site. The Bureau believes it is reasonable to deem that financial institutions make disclosure statements available, pursuant to HMDA sections 304(k)(1) and 304(m), by referring members of the public seeking disclosure statements to the Bureau's Web site, as provided under § 1003.5(b)(2) as adopted. Section 1003.5(b)(2) is also adopted pursuant to the Bureau's authority under HMDA 305(a); § 1003.5(b)(2) is necessary and proper to effectuate the purposes of HMDA and facilitate compliance therewith.

The Bureau received no comments on proposed comment 5(b)–2. Therefore, the Bureau adopts this comment as proposed. The Bureau received no comments on proposed comment 5(b)–3, and adopts this comment as proposed with modifications to reflect that HMDA data will be made available on the Bureau's Web site and that HMDA data for other financial institutions is also available. The Bureau did not propose changes to current comment 5(b)–1, but is adopting a modification to this requirement to clarify the paragraph to which it applies. Finally, the Bureau adopts new comment 5(b)–4 to clarify that a financial institution may use the same notice to satisfy the requirements of both § 1003.5(b)(2) and § 1003.5(c).[423]

The Bureau notes that § 1003.5(b) is effective January 1, 2018 and thus applies to the disclosure of 2017 HMDA data. Current Regulation C applies to requests received by financial institutions for HMDA data for calendar years prior to 2017.

5(c) Modified Loan/Application Register

HMDA section 304(j)(1) requires that financial institutions make available to the public, upon request, ''loan application register information'' as defined by the Bureau and in the form required under regulations prescribed by the Bureau. HMDA section 304(j)(2) provides that the Bureau shall require such deletions from the loan application register information made available to the public as the Bureau may determine to be appropriate to protect any privacy interest of any applicant and to protect financial institutions from liability under any Federal or State privacy law, and identifies three fields in particular as appropriate for deletion.[424] HMDA

[417] HMDA section 304(f), added by Housing and Community Development Act of 1980, Public Law 96–399, section 340, 94 Stat. 1614, 1657–58 (1980).

[418] 79 FR 51731, 51818 (Aug. 29, 2014).

[419] Anne Neville, *Nat'l. Broadband Map has Helped Chart Broadband Evolution,* Nat'l. Telecomms. & Info. Admin. Blog (Mar. 23, 2015), *http://www.ntia.doc.gov/blog/2015/national-broadband-map-has-helped-chart-broadband-evolution.*

[420] *Id.* (noting the gap between urban and rural areas with respect to broadband at higher speeds).

[421] Under current § 1003.5(d), financial institutions may charge a reasonable fee for any costs incurred in providing or reproducing their HMDA data. This provision is retained in the final rule.

[422] The Bureau notes that, under final § 1003.5(d)(2), a financial institution may make its disclosure statement available to the public in addition to, but not in lieu of, the notice required by § 1003.5(b)(2).

[423] As discussed below, the Bureau is adopting modifications to proposed § 1003.5(c) to require that a financial institution make available to the public a notice that clearly conveys that its modified loan/application register may be obtained on the Bureau's Web site and that includes the Bureau's Web site address.

[424] The fields identified in the statute as appropriate for deletion are ''the applicant's name and identification number, the date of the application, and the date of any determination by

section 304(j)(5) requires that the loan application register information described in section 304(j)(1) must be made available as early as March 31 following the calendar year for which the information was compiled. HMDA section 304(j)(7) provides that the Bureau shall make every effort to minimize costs incurred by financial institutions in complying with section 304(j).

Section 1003.5(c) of Regulation C requires a financial institution to make its loan/application register available to the public after removing three fields to protect applicant and borrower privacy: the application or loan number, the date that the application was received, and the date action was taken. An institution must make this ''modified'' loan/application register publicly available following the calendar year for which the data are compiled by March 31 for a request received on or before March 1, and within 30 calendar days for a request received after March 1.

The Bureau proposed to modify § 1003.5(c) to require that a financial institution make available to the public a modified loan/application register showing only the data fields that currently are released on the modified loan/application register. For the reasons described below, the Bureau is not finalizing § 1003.5(c) as proposed, and instead is adopting a requirement that a financial institution shall make available to the public at its home office, and each branch office physically located in each MSA and each MD, a notice that clearly conveys that the institution's modified loan/application register may be obtained on the Bureau's Web site.

The Bureau received several comments concerning proposed § 1003.5(c). A large majority of industry commenters recommended that the agencies make the modified loan/application register available to the public on a public Web site, such as the FFIEC's Web site. Many industry commenters specifically suggested that Regulation C require financial institutions to make their modified loan/application registers available in the same way the Bureau proposed to require institutions to make their disclosure statements available, *i.e.,* by making available a notice that clearly conveys that the modified loan/application register may be obtained on the FFIEC Web site and that includes the FFIEC's Web site address. Commenters argued that this approach would reduce burden to financial institutions, eliminate risk to financial institutions associated with deadlines by which they must make available their modified loan/application registers, increase public access to modified loan/application registers, and allow the Bureau to modify or redact the data as it determines necessary to protect applicant and borrower privacy. One industry commenter stated that, because the modified loan/application register is already available on the FFIEC Web site, the requirement that financial institutions make their modified loan/application registers available should be eliminated as duplicative. A few other industry commenters stated that financial institutions should be permitted to post their modified loan/application registers on their own Web sites instead of providing them to members of the public upon request.

With respect to the content of the modified loan/application register, a few industry commenters stated that some data currently disclosed on the modified loan/application register create risk that individual applicants and borrowers could be identified in the data. A few other industry commenters stated that public disclosure of many of the proposed new data fields would create risks of potential harm to applicant and borrower privacy. A handful of industry commenters misunderstood the Bureau's proposal concerning the modified loan/application register to provide that the proposed new data points would never be disclosed to the public, and some of these commenters supported such an approach.

Virtually all of the consumer advocate and researcher commenters opposed the proposal to exclude the proposed new data fields from the modified loan/application register. These commenters stated that many or most of the new data fields proposed were not likely to create risks to applicant or borrower privacy and should be released by March 31, not delayed until the agencies' later release of loan-level data.[425] Most of these commenters also argued that, at a minimum, the currently-released data fields should continue to be released. Several consumer advocate and researcher commenters articulated the benefits to HMDA purposes of many currently-released and proposed new data fields in arguing for the disclosure of these data on the modified loan/application register.

For the reasons described below, final § 1003.5(c) requires that a financial institution shall make available to the public at its home office, and each branch office physically located in each MSA and each MD, a notice that clearly conveys that the institution's modified loan/application register may be obtained on the Bureau's Web site. This approach fulfills the goals of the Bureau's proposal[426] and has several additional advantages. The final rule reduces costs to financial institutions associated with preparing and making available to the public the modified loan/application register, including costs associated with the application of privacy protections to the data before disclosure, and eliminates a financial institution's risk of missing the deadline to make the modified loan/application register available. It also eliminates the risks to financial institutions associated with errors in preparing the modified loan/application register that could result in the unintended disclosure of data. In addition, this approach aligns Regulation C's treatment of the modified loan/application register and the disclosure statement, which are the only HMDA data that the statute and Regulation C require financial institutions to make available to the public.

The approach adopted in the final rule also increases the availability of the modified loan/application register. The Bureau's Web site provides one, easily accessible location where members of the public will be able to access all modified loan/application registers for all financial institutions required to report under the statute, which furthers the disclosure goals of the statute.[427] As

the institution with respect to such application.'' HMDA section 304(j)(2)(B).

[425] The Bureau's proposal provided that the Bureau would include the proposed new data fields, modified as appropriate to protect applicant and borrower privacy, in the loan-level data release that the FFIEC makes available on its Web site on behalf of the agencies. *See* 79 FR 51731, 51816 (Aug. 29, 2014). As explained in the proposal, whereas a financial institution must make available its modified loan/application register as early as March 31, the regulators' loan-level HMDA data currently are not released until almost six months later, in September. *Id.*

[426] As explained in its proposal, the Bureau believed that its proposed approach ''would avoid creating new privacy risks or liabilities for financial institutions in connection with the release of loan-level data via the modified loan/application register. It would also minimize the burden to institutions associated with preparing their modified loan/application registers to implement amendments to Regulation C. The proposed approach would allow the Bureau and the other agencies flexibility in disclosing new data points in the agencies' data release, including flexibility to adjust any privacy protections as risks evolve, without unduly burdening financial institutions or creating opportunities for the modified loan/application register and the agencies' data release to interact in ways that might increase privacy risk.'' *Id.*

[427] Under proposed § 1003.5(c), as under current § 1003.5(c), for example, a member of the public that requests a financial institution's modified loan/application register need only be provided with a

Continued

discussed above with respect to the disclosure statement,[428] although there may be members of the public that are adversely affected by the elimination of the right to obtain a modified loan/application register directly from a financial institution, the Bureau has determined that the burden to financial institutions associated with the provision of these data directly to members of the public upon request is not justified by any benefit to the current dissemination scheme.

Finally, the approach in the final rule allows the Bureau and the other agencies increased flexibility in disclosing new data fields in a manner that appropriately protects applicant and borrower privacy. As discussed above,[429] the Bureau's assessment under its balancing test of the risks to privacy interests created by the disclosure of HMDA data and the benefits of such disclosure is ongoing and includes consideration of currently-released data points. Section 1003.5(c) as adopted will allow decisions with respect to what to include on the modified loan/application register to be made in conjunction with decisions regarding the agencies' loan-level data release, providing flexibility with respect to the agencies' release and flexibility to include on the modified loan/application register the new data fields that do not raise privacy concerns. This approach also will allow for easier adjustment of privacy protections applied to disclosures of HMDA data as risks evolve. The Bureau plans to provide a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed both on the modified loan/application register and in the agencies' release.

The final rule imposes fewer burdens on financial institutions than a requirement that the modified loan/application register be made available on financial institutions' Web sites, as suggested by some industry commenters.[430] The Bureau also declines to eliminate § 1003.5(c) altogether. As discussed above with respect to the disclosure statement,[431] although the final rule relieves financial institutions of the obligation to provide the modified loan/application register directly to the public, the Bureau has determined that provision of the notice required under § 1003.5(c) to members of the public seeking a financial institution's modified loan/application register is necessary to ensure that they are clearly informed of where to obtain it.

The final rule eliminates the 30-day period between a financial institution's receipt of a request for its modified loan/application register and its obligation to provide in response the notice required pursuant to § 1003.5(c). Rather than preparing a modified loan/application register in response to a request, as required under the current regulation, under the final rule a financial institution will only need to provide a member of the public seeking a modified loan/application register with a simple notice. The Bureau has determined that 30 days to provide such a notice is unnecessary and conflicts with the disclosure purposes of the statute. Further, as a financial institution's ability to provide the notice required under the final rule in response to a request is not dependent on the financial institution's possession of the data, as is its ability to provide the modified loan/application register under the current regulation, a financial institution does not need to wait until March 31 to provide a notice in response to a request for its modified loan/application register.

The Bureau believes it is reasonable to deem that financial institutions make available to the public loan application register information, pursuant to HMDA section 304(j), by referring members of the public seeking loan application register information to the Bureau Web site, as provided under § 1003.5(c). Section 1003.5(c) is also authorized pursuant to the Bureau's authority under HMDA section 305(a). For the reasons given above, the Bureau concludes that § 1003.5(c) as adopted is necessary and proper to effectuate HMDA's purposes and facilitate compliance therewith.

The Bureau did not propose changes to current comment 5(c)–1 but is adopting modifications to this comment to conform to § 1003.5(c) as finalized. Proposed comment 5(c)–2 is adopted as modified to provide an example of notice content that would satisfy the requirements of § 1003.5(c). Proposed comment 5(c)–3 is adopted as modified to clarify that a financial institution may use the same notice to satisfy the requirements of both § 1003.5(b)(2) and § 1003.5(c).

The Bureau notes that § 1003.5(c) is effective January 1, 2018 and thus applies to the disclosure of 2017 HMDA data. Current Regulation C applies to requests received by financial institutions for HMDA data for calendar years prior to 2017.

5(d) Availability of Written Notice

HMDA sections 304(c) and 304(j)(6) set forth the time periods for which financial institutions must maintain and make available information required to be disclosed under the statute. HMDA sections 304(j)(4) and 304(k)(3) permit a financial institution that provides its loan/application register information or its disclosure statement to a member of the public to impose a reasonable fee for any cost incurred in reproducing the information or statement. Section 1003.5(d) of Regulation C requires that a financial institution must make its modified loan/application register available to the public for a period of three years and its disclosure statement available to the public for a period of five years. This section also provides that an institution must make these disclosures available to the public for inspection and copying during the hours the office is normally open to the public for business and may impose a reasonable fee for any cost incurred in providing or reproducing the data.

The Bureau proposed to delete the requirement that a financial institution make its HMDA data available for inspection and copying and to make additional technical modifications to § 1003.5(d). The Bureau is adopting § 1003.5(d) as proposed with clarifying modifications.

The Bureau received very few comments on proposed § 1003.5(d). One industry commenter supported the proposal to delete the requirement that a financial institution make its data available for inspection and copying. Another industry commenter misunderstood the proposal to require that financial institutions retain their disclosure statements and modified loan/application registers for the requisite periods, and stated that the availability of these data on the FFIEC Web site made these requirements duplicative and unnecessary.

The Bureau is adopting § 1003.5(d)(1) generally as proposed, with modifications to clarify that it requires

modified loan/application register containing data relating to the MSA or MD for which the request is made. Referral to the Bureau Web site would allow that member of the public to easily view the financial institution's modified loan/application registers for all available MSAs and MDs. Also, to the extent a member of the public wanted to compare the lending activities of financial institutions in a particular MSA or MD, the Bureau Web site allows her to do so all in one place, rather than requiring her to obtain a modified loan/application register from multiple institutions.

[428] *See* section-by-section analysis of § 1003.5(b)(2).

[429] *See* part II.B above.

[430] The Bureau notes that the final rule permits a financial institution to make available on its Web site a copy of the institution's modified loan/application register obtained from the Bureau's Web site. *See* § 1003.5(d)(2).

[431] *See* section-by-section analysis of § 1003.5(b)(2).

a financial institution to retain the notices concerning its disclosure statements and modified loan/application registers required pursuant to § 1003.5(b)(2) and (c), not the disclosure statements and modified loan/application registers themselves. The Bureau adopts § 1003.5(d)(2) as modified to clarify that a financial institution may make its disclosure statement and its modified loan/application register available to the public in addition to, but not in lieu of, the notices required by § 1003.5(b)(2) and (c), and may impose a reasonable fee for any cost associated with providing or reproducing its disclosure statement or modified loan/application register.

The Bureau notes that § 1003.5(d) is effective January 1, 2018 and thus applies to the disclosure of 2017 HMDA data. Current Regulation C applies to requests received by financial institutions for HMDA data for calendar years prior to 2017.

5(e) Posted Notice of Availability of Data

HMDA section 304(m) provides that a financial institution shall be deemed to have satisfied the public availability requirements of HMDA section 304(a) if it compiles its HMDA data at its home office and provides notice at certain branch locations that its information is available upon written request. Section 1003.5(e) of Regulation C requires that a financial institution post a notice concerning the availability of its HMDA data in the lobby of its home office and of each branch office located in an MSA and MD. Section 1003.5(e) also requires that a financial institution must provide, or the posted notice must include, the location of the institution's office where its disclosure statement is available for inspection and copying. Comment 5(e)–1 suggests text for the posted notice required under § 1003.5(e). Comment 5(e)–2 suggests text concerning disclosure statements that may be included in the posted notice to satisfy § 1003.5(b)(3)(ii). The Bureau proposed clarifying and technical modifications to § 1003.5(e) and related comments and modifications to conform to proposed § 1003.5(b)(2).

The Bureau received very few comments on proposed § 1003.5(e). One industry commenter supported deleting language from § 1003.5(e) concerning the location of the institution's office where its disclosure statement is available for inspection and copying. The Bureau adopts § 1003.5(e) as proposed with one modification to clarify that the required lobby notice must clearly convey that the institution's HMDA data may be obtained on the Bureau's Web site.

One industry commenter opposed the proposed changes to comment 5(e)–1 concerning the suggested notice text, stating that it was a waste of financial institution resources to update the posted notice to reflect that the HMDA data include age. The addition of language concerning age was not the only proposed change to the suggested notice text, however. The proposed suggested text also updated the posted notice to provide information about where HMDA data could be found online. The Bureau has determined that inclusion of information concerning where HMDA data can be found online is necessary to ensure access to HMDA data, especially as financial institutions will no longer be required to provide either their disclosure statements or their modified loan/application registers directly to the public under amended Regulation C. The Bureau adopts comment 5(e)–1 as proposed with technical modifications.

5(f) Aggregation

HMDA section 310 requires the FFIEC to compile aggregate data by census tract for all financial institutions reporting under HMDA and to produce tables indicating aggregate lending patterns for various categories of census tracts grouped according to location, age of housing stock, income level, and racial characteristics. HMDA section 304(f) requires the FFIEC to implement a system to facilitate access to data required to be disclosed under HMDA section 304, including arrangements for central depositories where such data are made available for inspection and copying. Section 1003.5(f) of Regulation C provides that the FFIEC will produce reports for individual institutions and reports of aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race, and will make these reports available at central depositories. Section 1003.5(f) also contains information concerning how to obtain a list of central depositories from the FFIEC. The Bureau proposed to modify § 1003.5(f) to replace the word ''produce'' with ''make available'' for clarity and to delete reference to central depositories. The Bureau is adopting § 1003.5(f) as proposed with minor modifications.

The Bureau received one comment concerning proposed § 1003.5(f). This commenter stated that disclosure of automated underwriting system name and result in the aggregated data, could reveal proprietary information concerning these systems. As discussed above,[432] at this time the Bureau is not making determinations about what HMDA data will be publicly disclosed or the forms of such disclosures.

The Bureau is adopting proposed § 1003.5(f) with three modifications. The final rule clarifies that the aggregates described in this paragraph and made available in 2018 are based on 2017 data submitted pursuant to current § 1003.5(a), and that the aggregates made available beginning in 2019 are based on data submitted on an annual basis pursuant to § 1003.5(a)(1)(i), not data submitted on a quarterly basis pursuant to § 1003.5(a)(1)(ii). The Bureau has determined that reference to reports for individual institutions in this paragraph is no longer necessary[433] and is eliminating this reference in the final rule. Finally, the Bureau has determined that reference to the location where the aggregate data described in this paragraph will be made available is unnecessary and is eliminating this reference in the final rule.

As discussed in its proposal,[434] the Bureau believes that advances in technology may permit, for example, the FFIEC to produce an online tool, such as a tabular engine, that would allow public officials and members of the public to generate the tables described in HMDA section 310. It is the Bureau's interpretation that the obligation to ''produce tables'' set forth in HMDA section 310 would be satisfied if the FFIEC produced such a tool, which in turn would produce the tables described in HMDA section 310 on request. Further, pursuant to HMDA section 305(a), the Bureau believes that permitting the FFIEC to produce a tool that allows members of the public to generate tables described in HMDA section 310 is necessary and proper to effectuate the purposes of HMDA and facilitate compliance therewith.

Section 1003.6 Enforcement

6(b) Bona Fide Errors

The Bureau did not propose to amend § 1003.6. HMDA section 305(b) provides that compliance with HMDA is enforced by the Board, FDIC, OCC, the Bureau, NCUA, and HUD.[435] Each of these Federal agencies can rely on its own authorities to enforce compliance with

[432] *See* section-by-section analysis of § 1003.4(a)(35).

[433] The FFIEC's obligation to make available the disclosure statements is set forth in final § 1003.5(b)(1).

[434] 79 FR 51731, 51818 (Aug. 29, 2014).

[435] 12 U.S.C. 2804(b). Most commenters who addressed the enforcement and examination practices of the Federal agencies did not specify the particular agency to which the commenters submit their data.

HMDA, including the authority conferred in HMDA section 305(b).[436] Section 1003.6(a) of Regulation C provides that a violation of HMDA or Regulation C is subject to administrative sanctions as provided in HMDA section 305, including the imposition of civil money penalties.[437] Regulation C § 1003.6(b) provides authority to find that ''bona fide errors'' are not violations of HMDA and Regulation C. Section 1003.6(b)(1) provides that an error in compiling or recording loan data is not a violation if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors. Section 1003.6(b)(2) provides that an incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of HMDA or Regulation C, if the financial institution maintains procedures reasonably adapted to avoid such errors. Currently, § 1003.6(b)(3) addresses and provides some latitude for inaccurate or incomplete quarterly recording of data.

Although the Bureau did not propose specific changes to § 1003.6, it sought feedback generally about concerns raised by the small entity representatives during the Small Business Review Panel process regarding whether, in light of new reporting requirements, it would be appropriate to add new provisions to § 1003.6 to clarify compliance expectations and address compliance burdens or operational challenges.[438] The Bureau specifically sought feedback on whether a more precise definition of what constitutes an error would be helpful, whether there are ways to improve the current methods of calculating error rates, and whether tolerance levels for error rates would be appropriate. For the reasons discussed below, the Bureau is revising current § 1003.6(a), (b)(1), and (b)(2), and comment 6(b)–1, only by making technical, nonsubstantive edits. The Bureau is moving § 1003.6(b)(3) to new § 1003.6(c)(1), as discussed below.

Comments on Enforcement

Approximately one-third of the commenters addressed enforcement, data errors, and administrative resubmission requirements related to Regulation C. Nonindustry commenters generally did not comment on enforcement policies and error rates. Most industry commenters that addressed the topic identified what they viewed as unrealistic tolerance levels as being an issue with Regulation C compliance and enforcement. Many industry commenters stated that the compliance and enforcement concerns would likely be exacerbated by additional data points in the final rule.

Some industry commenters expressly recognized the importance of the submission of accurate data, affirmed that reporting entities are concerned with the integrity of their data, and acknowledged that they would understand reasonable and fair requirements relating to errors. Many of the commenters stated that despite the implementation of appropriate systems and controls and efforts to comply with the spirit of Regulation C, innocent errors and human judgment errors in interpretation and data input are impossible to eliminate completely. A common theme among industry commenters was that additional data collection and reporting requirements mean there is a greater likelihood of errors. A number of commenters echoed a request that the Bureau reconsider examination procedures and guidelines and make adjustments to acceptable error rates, especially in light of the significant increase in the amount of data that reporting entities will be required to compile, audit, and report.

Many commenters suggested that tolerances for errors be increased if the final rule includes additional data points in Regulation C. One commenter urged the Bureau not to discount the burden of reporting accurate data. Others stated that data is not easy to get right because of the number of people involved in loan production, and that manual audits conducted on the additional data by compliance staff will take significantly more time and force reporting institutions to shift resources or add staff. A few commenters noted exposure to reputational risks, as well as to administrative enforcement, that could be associated with increased reporting errors. A trade association commented that reasonable tolerances are necessary to minimize compliance costs. A few commenters observed that a demonstrated pattern of these types of errors could suggest that the errors are not inadvertent. A number of commenters requested relief from responsibility for errors based on: good faith efforts; technical, de minimis errors; distinguishing critical and noncritical errors; inadvertent errors; bona fide errors; immaterial errors; distinguishing random and systemic errors; and distinguishing key and non-key errors.

Multiple commenters suggested specific data points that, in addition to institutional and transaction coverage changes, might contribute to a need for increasing the current error tolerances, including: age; income, as proposed; denial reasons; universal loan identifier; debt-to-income ratio; loan-to-value ratio; AUS information; points and fees; and data points that contain dates, dollar amounts, and percentages. Similarly, some commenters advocated that the Bureau establish acceptable ranges for the values reported for certain data points, for reasons that include the potential for rounding numbers incorrectly and making errors in calculations, and allow latitude for entering the wrong text in data fields, such as ''N/A'' instead of ''none.'' Other specific recommendations included: preclude resubmissions of data on loans that do not constitute a material percentage of all loans in a reporting year in the associated metropolitan statistical area; limit punitive actions for reporting errors that do not lead to findings of discrimination; adopt a tiered evaluation of errors that is dependent on the reasons for the errors; excuse errors resulting from reliance on third-party information; apply more-lenient standards to new data points initially; develop guidance and interagency exam procedures that support compliance; and provide a sufficient implementation period to adjust to new requirements.

One industry commenter acknowledged that the Bureau may not want to address clarifications of error rates and tolerances through rulemaking, at the same time expressing concern about potential compliance burdens for accuracy in a significantly larger data submission. Another commenter suggested that Regulation C include a statement that a bona fide unintentional error is not a violation. A few commenters predicted that the proposed reporting changes would cause more financial institutions to exit mortgage lending, with the exiting institutions skewing small, and would discourage new entrants to the market, significantly decreasing the availability of credit.

Final Rule

After considering the comments, the Bureau has concluded that there are more effective ways to address the issues raised by the commenters than by making substantive changes to § 1003.6(b). In reaching this conclusion, the Bureau accepts that some errors in data compilation and reporting are

[436] HMDA section 305(c); 12 U.S.C. 2804(c).

[437] *See* CFPB Bulletin 2013–11 (2013), *http://files.consumerfinance.gov/f/201310_cfpb_hmda_compliance-bulletin_fair-lending.pdf*, which, among other things, sets out factors the Bureau will consider in determining any civil money penalty for violations of HMDA and Regulation C.

[438] The comments of the small entity representatives were summarized in the proposed rule. *See* 79 FR 51731, 51818 (Aug. 29, 2014).

difficult to avoid altogether. HMDA data are important for the public and public officials, therefore the final rule seeks to balance the need for accurate data and the challenge of generating that data.

The Bureau believes that many of the error-related issues raised by commenters would be best addressed through supervisory policy, rather than regulatory language. Most of the comments specifically or implicitly addressed current administrative examination procedures and guidelines for required resubmission of data when error levels exceed established thresholds. Decisions regarding when to pursue an enforcement action or other solution for noncompliance with HMDA or Regulation C are a matter of agency discretion. Each of the agencies that has authority to enforce HMDA can develop internal procedures and guidelines for citing a financial institution for inaccurate data. For example, the Bureau makes its HMDA examination guidelines available publicly, so that financial institutions understand, and can develop internal processes to meet, expectations for HMDA data accuracy.[439] The use of guidelines, which provide a measure for application of enforcement principles, coupled with language in § 1003.6(b) that deems certain errors to be excused, benefits examiners and financial institutions, alike. In particular, as the agencies and financial institutions gain experience with the new definitions, requirements, increased number of data points, reporting instructions, and technology, the guidelines can be tailored, adjusted, and applied as appropriate.

In addition, however, the final rule addresses some of the commenters' particular areas of concern in stating the requirements and providing commentary for individual data points. For example, financial institutions are permitted to report the information they relied on for several data points and have some flexibility in the format they use to report certain data points. The final rule provides further guidance and examples of acceptable values in commentary and, more generally, addresses many common issues with the current regulation by clarifying various provisions in the regulations and commentary. The Bureau also plans to expand data submission edit checks to improve the ability of financial institutions to identify and fix mistaken data before final submission to the agencies, which could also benefit the financial institutions in their internal audit processes. Finally, the Bureau will develop additional guidance materials to help financial institutions understand the final rule and avoid errors in interpreting its requirements.

Public officials rely on the data reported by financial institutions to further HMDA's purposes. In addition, the data disclosed under HMDA provide the public with information on the mortgage activities of particular reporting financial institutions and in communities. Because HMDA data serve these important purposes, accurate data is essential.

The accuracy of HMDA data depends on good operational and validation processes. Financial institutions have primary responsibility for these processes; the institutions must develop and maintain appropriate compliance management systems that are reasonably designed to ensure the accuracy of the data. Examination procedures used by the Federal regulators further assure appropriate validation of the HMDA data, by assessing a financial institution's policies, procedures, monitoring, and corrective-action processes.

The Bureau has concluded that it should not establish in Regulation C global thresholds for the number or percentage of errors in a financial institution's data submission that would trigger compliance or enforcement action. Establishing regulatory thresholds for errors or adding resubmission requirements to the regulation are not likely to lead to a satisfactory outcome for industry or the regulators. The current provision on bona fide errors in § 1003.6(b), in conjunction with agency guidelines, provides appropriate flexibility for regulators to exercise judgment in assessing compliance violations.

The Bureau anticipates that the Federal agencies enforcing HMDA will review their enforcement approaches in light of the significant regulatory changes included in the final rule and consult on any appropriate adjustments to their policies, both during the final rule's implementation period and beyond. Currently, some errors are found and addressed in the data submission process, using edits developed through the FFIEC coordination agreement, while other errors can be identified only in subsequent audits or examinations by comparing HMDA data submitted to loan files. As the Bureau collaborates with the other HMDA enforcement agencies on future administrative examination and review procedures, it will consider, and bring to the attention of those agencies, the numerous comments and suggestions received on this topic during the public comment process on the proposed rule.

The final rule makes technical, nonsubstantive edits to current § 1003.6(a), (b)(1), and (b)(2) and comment 6(b)–1, for purposes of clarity and consistency.

6(c) Quarterly Recording and Reporting

The Bureau did not propose changes to § 1003.6(b)(3), but is adopting changes to this provision in connection with the quarterly reporting requirement finalized in § 1003.5(a)(1)(ii). Under § 1003.5(a)(1)(ii) as adopted, within 60 calendar days after the end of each calendar quarter except the fourth quarter, financial institutions subject to § 1003.5(a)(1)(ii) will submit the HMDA data that they are required to record on their loan/application registers for that calendar quarter pursuant to § 1003.4(f). Pursuant to new § 1003.6(c)(2), errors and omissions in the data submitted pursuant to § 1003.5(a)(1)(ii) will not be considered HMDA or Regulation C violations assuming the conditions that currently provide a safe harbor for errors and omissions in quarterly recorded data are satisfied.

Currently, § 1003.6(b)(3) provides that errors and omissions in data that a financial institution records on its loan/application register on a quarterly basis as required under § 1003.4(a) are not violations of HMDA or Regulation C if the institution makes a good-faith effort to record all required data fully and accurately within thirty calendar days after the end of each calendar quarter and corrects or completes the data prior to reporting the data to its regulator. That is, § 1003.6(b)(3) provides a safe harbor that protects a financial institution that satisfies certain conditions from being cited for violations of HMDA or Regulation C for errors and omissions on its quarterly recorded loan/application register. The Bureau is moving § 1003.6(b)(3) to new paragraph § 1003.6(c)(1) and adding paragraph (c)(2) to provide that a similar safe harbor applies to data reported on a quarterly basis pursuant to § 1003.5(a)(1)(ii).

The Bureau adopts § 1003.6(c). Section 1003.6(c)(1) applies to data that an institution *records* on its loan/application register on a quarterly basis as required under § 1003.4(f), as finalized herein. It provides that, if a financial institution makes a good-faith effort to record all data required to be recorded pursuant to § 1003.4(f) fully and accurately within 30 calendar days after the end of each calendar quarter, and some data are nevertheless

[439] *See* CFPB Supervision and Examination Manual, *HMDA Resubmission Schedule and Guidelines* (2013), *http://files.consumerfinance.gov/f/201310_cfpb_hmda_resubmission-guidelines_fair-lending.pdf*.

inaccurate or incomplete, the inaccuracy or omission is not a violation of HMDA or Regulation C provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i). Section 1003.6(c)(2) applies to data that an institution *reports* on a quarterly basis pursuant to § 1003.5(a)(1)(ii). It provides that, if an institution subject to § 1003.5(a)(1)(ii) makes a good-faith effort to report all data required to be reported pursuant to § 1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of HMDA or Regulation C provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i).

The Bureau is adopting an effective date of January 1, 2019 for § 1003.6. Accordingly, this section applies to HMDA data reported beginning in 2019. For example, compliance is enforced pursuant to this final rule with respect to 2018 data reported in 2019. Section 1003.6 of current Regulation C applies to the collection and recording of HMDA data in 2018.

Appendix A to Part 1003 Form and Instructions for Completion of HMDA Loan/Application Register

Part I of appendix A to Regulation C currently provides instructions for the Loan/Application Register. Part II of appendix A contains instructions related to reporting HMDA data, including instructions for sending HMDA data via U.S. mail. Appendix A also contains a form for the transmittal sheet, a form for the loan/application register, and a technical code sheet for completing the loan/application register. As discussed in many of the section-by-section analyses above, the Bureau is expanding the regulation text and commentary to address the requirements currently provided in part I of appendix A and in the form for the transmittal sheet. As discussed in the section-by-section analysis of § 1003.5(a)(1) above, the Bureau is eliminating paper reporting. Furthermore, the Bureau intends to publish procedures related to the submission of the data required to be reported under Regulation C, which will replace the existing form for the loan/application register and technical code sheet for completing it. Thus, the requirements and other information currently provided in appendix A are no longer necessary, and the final rule deletes appendix A.

To accomplish the transition from reporting current to amended data, the final rule deletes appendix A in two stages. First, effective January 1, 2018, the final rule adds to appendix A a new paragraph explaining the transition requirements for data collected in 2017 and reported in 2018. Also effective January 1, 2018, part II of appendix A is revised to provide updated instructions relating to the reporting of 2017 HMDA data. Then, effective January 1, 2019, appendix A is deleted in its entirety, when instructions relating to the reporting of 2017 HMDA data will no longer be necessary.

I. Effective Date

A. Comments

In response to the proposed rule, the Bureau received roughly a few dozen comments concerning effective date and implementation period. Industry commenters, including banks and credit unions; software providers; and trade associations provided recommendations on the timing for implementation. The recommendations for the implementation period ranged from a minimum of at least one full calendar year to several years. Most commenters recommended 18 to 24 months while several other commenters advocated for 24 to 36 months. A couple of commenters did not suggest a specific timing period but urged the Bureau to allow as much time as possible.

Many commenters cited operational challenges as a reason why ample time is needed for implementation. These commenters stated that systems will need to be redesigned or replaced to accommodate the new rules. A couple of commenters pointed out that not all business areas of a bank use the same system to capture HMDA data. One commenter, in particular, stated that if all the proposed data fields are finalized, then it may require data from two or more systems. This commenter cited the possibility of the need to integrate data from several systems designed for origination and servicing for consumer, real estate, and business transactions. One software provider that advocated for a 36 month implementation period stated that software providers need time to design, develop, and distribute software to financial institution clients. These clients will then need to test need the software, implement procedural changes, and train staff. Several commenters indicated that policies and procedures will need to be developed and staff will need to be trained on those policies and procedures. One commenter asked that the Bureau consider the time it takes to interpret the final regulation.

Several commenters pointed out that the industry is currently focusing on implementing the TILA–RESPA and other mortgage rules and staff is fully engaged in implementing those rules or enhancing compliance programs. One commenter stated that forcing industry to shift or split resources between TILA–RESPA and HMDA may affect the ability to implement one or both rules by their effective date.

While many commenters suggested a specific number of months or years, a few commenters specified January 1 as the day that data collection should begin regardless of the year of the effective date. One commenter suggested that the Bureau specify that the effective date applies to applications taken on or after the date the Bureau designates. Another commenter argued that implementing the final rule any day of the year other than January 1 would cause confusion for financial institutions collection and reporting the data, and may even possibly affect data quality.

Several commenters noted that the Dodd-Frank Act does not provide a deadline for implementing amendments to the HMDA rule, so they urged the Bureau to use its discretionary authority to provide adequate additional time for compliance. One trade association suggested that the Bureau should use its discretionary authority and consider the burden on small entities by providing an extended effective date for certain groups of entities

One trade association asked the Bureau to provide transition rules for applications received before the effective date but where final action is taken on the application after the effective date.

The Bureau has considered the comments, including the potential issues that could arise as a result of an inadequate implementation period and industry's focus on other recent mortgage rulemakings, and believes that the effective date described below achieves the right balance between ample time for implementation and the need for useful HMDA data that reflects the current housing finance market.

B. The Effective Date and Implementation Period

In consideration of the comments and recommendations suggested by commenters, the final rule is effective

January 1, 2018,[440] except that: § 1003.2(g)(1)(v)(A) is effective January 1, 2017; § 1003.5(a)(1)(i), (a)(1)(iii), and (a)(2) through (5) are effective January 1, 2019; § 1003.6 is effective January 1, 2019; and § 1003.5(a)(1)(ii) is effective January 1, 2020. Section 1003.5(b) and (f), as revised effective January 1, 2018, are revised again on January 1, 2019. Appendix A is revised effective January 1, 2018 and then deleted effective January 1, 2019. Commentary to § 1003.5(a) and § 1003.6 in supplement I, as revised effective January 1, 2018, are revised again effective January 1, 2019. These exceptions to the general effective date of January 1, 2018 are described in further detail below.

This final rule applies to covered loans and applications with respect to which final action is taken beginning on January 1, 2018. Data on these covered loans and applications are submitted to the appropriate Federal agency pursuant to § 1003.5(a) beginning on January 1, 2019. For example, if a financial institution described in 2(g) of this part receives an application on January 1, 2018 and takes final action on that application on March 1, 2018, data about that application will be collected and recorded pursuant to § 1003.4, and submitted to the appropriate Federal agency by March 1, 2019 pursuant to § 1003.5(a). Similarly, if a financial institution described in 2(g) of this part receives an application on December 1, 2017 and does not take final action on that application until January 1, 2018, data about that application would be collected and recorded pursuant to § 1003.4 and submitted to the appropriate Federal agency by March 1, 2019 pursuant to § 1003.5(a).[441] The final rule also applies to purchases that occur on or after January 1, 2018. For example, a financial institution described in 2(g) of this part that purchases a HMDA reportable loan on February 1, 2018 would collect and record data about that purchase pursuant to § 1003.4, and submit the data to the appropriate Federal agency by March 1, 2019 pursuant to § 1003.5(a).

Lower-Volume Depository Institutions

The Bureau is adopting an effective date of January 1, 2017 for § 1003.2(g)(1)(v)(A), which is one of the prongs of the institutional coverage test for depository institutions. Specifically, this prong provides that a depository institution must originate at least 25 closed-end mortgage loans in each of the preceding two calendar years. Therefore, a depository institution that originates at least 25 closed-end mortgage loans in each of two calendars years and that otherwise meets all the other criteria specified in § 1003.2(g)(1) would be required to report HMDA data for 2017. However, if the depository institution originated less than 25 closed-end mortgage loans in each of two calendars years, then it would not be required to report HMDA data even if it meets all other reporting criteria specified in § 1003.2(g)(1). Similarly, if the depository institution originated 25 closed-end mortgage loans in one calendar year and then originated less than 25 closed-end mortgage loans in the subsequent calendar year, the depository institution would not be required to report HMDA data for 2017.

Reporting Data to the Appropriate Federal Agency and Disclosing Data to the Public

The Bureau is adopting an effective date of January 1, 2019 for § 1003.5(a)(1)(i), (a)(1)(iii), and (a)(2) through (a)(5), and related commentary, which concern the submission of data collected and recorded pursuant to this final rule. Financial institutions will submit data on covered loans and applications with respect to which final action is taken in 2018 to the appropriate Federal agency pursuant to these provisions by March 1, 2019.[442]

Data collected and recorded in 2017 pursuant to current Regulation C will be reported by March 1, 2018 pursuant to current § 1003.5(a). The final rule's amendments to supplement I effective January 1, 2018 generally maintain the current commentary to § 1003.5(a) with respect to the reporting of data collected in 2017 and reported in 2018.[443] Effective January 1, 2019, commentary to § 1003.5(a) is revised to address the reporting of data beginning in 2019. The final rule adds to appendix A a new paragraph explaining the transition requirements for data collected in 2017 and reported in 2018, effective January 1, 2018. On that date, part II of appendix A is also revised to provide updated instructions relating to the reporting of 2017 HMDA data. Then, effective January 1, 2019, appendix A is deleted in its entirety, when instructions relating to the reporting of 2017 HMDA data will no longer be necessary.

Financial institutions will make available to the public their 2017 HMDA data pursuant to § 1003.5(b) through (e) of this final rule. Financial institutions make available to the public their HMDA data for calendar years prior to 2017 pursuant to current Regulation C.

Quarterly Reporting

The Bureau is adopting an effective date of January 1, 2020 for § 1003.5(a)(1)(ii), which concerns quarterly reporting. This delay is to permit financial institutions subject to the quarterly reporting requirement time to implement the final rule and complete two annual reporting cycles under the final rule before being required to submit quarterly data. A financial institution required to comply with § 1003.5(a)(1)(ii) will submit its first quarterly data to the appropriate Federal agency by May 30, 2020. For example, a financial institution that reports at least 60,000 covered loans and applications, not including purchased covered loans, in its 2019 HMDA data submission is required to report its 2020 HMDA data on a quarterly basis pursuant to § 1003.5(a)(1)(ii), beginning with the first quarterly submission due on May 30, 2020.

Enforcement

The Bureau is adopting an effective date of January 1, 2019 for § 1003.6, which concerns enforcement of HMDA and Regulation C. The amendments to § 1003.6 adopted in this final rule apply to HMDA data reported beginning in 2019. Thus, current § 1003.6 applies to data collected in 2017 and reported in 2018, and amended § 1003.6 applies to 2018 data reported in 2019.

Implementation Period

The Bureau believes that these effective dates, which provide an extended implementation period of over two years, is appropriate and will provide industry with sufficient time to revise and update policies and procedures; implement comprehensive systems change; and train staff. In addition, the implementation period will assist in facilitating updates to the processes of the Federal regulatory

[440] HMDA section 304(n) provides that institutions shall not be required to report new data under HMDA section 304(b)(5) and (6) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures. Although the statute permits a shorter period than the effective date the Bureau is finalizing, the Bureau believes that a longer period will help reduce implementation burden on industry.

[441] The Bureau understands that final action taken on an application may not occur until a few months after the application date. A financial institution may receive an application at the end of a calendar year but may not determine the final disposition of the application until the following calendar year.

[442] Appendix A is deleted effective January 1, 2019, so will not apply to the submission of data on covered loans and applications with respect to which final action is taken in 2018.

[443] As discussed further above in the section-by-section analysis of § 1003.5(a), some of the current comments to § 1003.5(a) are removed and reserved effective January 1, 2018.

agencies responsible for supervising financial institutions for compliance with the HMDA rule.

In order to assist industry with an efficient and effective implementation of the rule, the Bureau intends to provide guidance in the form of plain language compliance guides and aids, such as videos and reference charts; technical specifications and documentation; and in conducting meetings with stakeholders to discuss the rule and implementation issues.

VII. Section 1022(b)(2) of the Dodd-Frank Act

The Bureau has considered the potential benefits, costs, and impacts of the final rule.[444] In developing the final rule, the Bureau has consulted with or offered to consult with the prudential regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency), the Department of Justice, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Securities and Exchange Commission, and the Federal Trade Commission regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

As discussed in greater detail elsewhere throughout this supplementary information, in this rulemaking the Bureau is amending Regulation C, which implements HMDA, and the official commentary to the regulation, as part of the Bureau's implementation of the Dodd-Frank Act amendments to HMDA regarding the reporting and disclosure of mortgage loan information. The amendments to Regulation C implement section 1094 of the Dodd-Frank Act, which made certain amendments to HMDA.[445]

The final rule includes additional amendments to Regulation C to implement the Dodd-Frank Act's provisions permitting reporting of, as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator, a universal loan identifier, and the parcel number that corresponds to the property pledged or proposed to be pledged as collateral. The final rule also requires financial institutions to report additional information pursuant to authority under sections 304(b)(5)(D) and 304(b)(6)(J) of HMDA, which permit the disclosure of such other information as the Bureau may require, and section 305(a) of HMDA, which, among other things, broadly authorizes the Bureau to prescribe such regulations as may be necessary to carry out HMDA's purposes. Certain additional data points included in the final rule are not specifically identified by the Dodd-Frank Act amendments to HMDA.[446]

The final rule also modifies the regulation's transactional and institutional coverage. Regarding transactional coverage, the final rule requires financial institutions to report activity for consumer-purpose dwelling-secured loans and lines of credit, regardless of whether the loans or credit lines are for home purchase, home improvement, or refinancing.[447] The final rule adjusts institutional coverage to adopt loan-volume thresholds of 25 closed-end mortgage loans or 100 open-end lines of credit for all financial institutions.

Furthermore, the Bureau is modifying the frequency of reporting for certain financial institutions with large numbers of transactions, and the requirements regarding the public availability of the HMDA disclosure statement and the modified loan/application register. Financial institutions that reported at least 60,000 covered loans and applications, excluding purchased covered loans, for the preceding calendar year, are required to report data quarterly to the appropriate Federal agency for the first three quarters of each calendar year. Financial institutions are required to make available to the public notices that clearly convey that the institution's disclosure statement and modified loan/application register may be obtained on the Bureau's Web site and that includes the Web site address.

The Bureau is also separately implementing several operational enhancements and modifications designed to reduce the burden of reporting HMDA data. The Bureau is working to improve the geocoding process, creating a web-based HMDA data submission and edit-check system, developing a data-entry tool for small financial institutions that currently use Data Entry Software, and otherwise streamlining the submission and editing process to make it more efficient. The Bureau is also adopting definitions of many data points that are consistent with existing regulations and with the MISMO data standards for residential mortgages.

A. Provisions To Be Analyzed

The discussion below considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The scope of the institutional coverage of the final rule.
2. The scope of the transactional coverage of the final rule.
3. The data that financial institutions are required to report about each covered loan or application.
4. The modifications to disclosure and reporting requirements.

For each major provision in the final rule, the discussion considers the benefits, costs, and impacts to consumers and covered persons, and addresses certain alternative provisions that the Bureau considered. The

[444] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[445] These amendments, among other things, require financial institutions to itemize their HMDA data by: The age of mortgagors and mortgage applicants; points and fees payable at origination in connection with a mortgage; the difference between the annual percentage rate associated with a loan and a benchmark rate or rates for all loans; the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; the value of the real property pledged or proposed to be pledged as collateral; the actual or proposed term in months of any introductory period after which the rates of interest may change; the presence of contractual terms or proposed contractual terms that would allow the applicant or borrower to make payments other than fully amortizing payments during any portion of the loan term; the actual or proposed term in months of the mortgage; the channel through which the mortgage application was made, including retail, broker, and other relevant categories; and the credit score of mortgage applicants and borrowers.

[446] These additional data include: The construction method for the dwelling related to the subject property; mandatory reporting of the reasons for denial of a loan application; the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan; the total amount of any general credits provided to the borrower by the lender; the interest rate applicable at closing or account opening; the applicant's or borrower's debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property; 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; the land property interest for loans or applications related to manufactured housing; the total number of individual dwelling units contained in the dwelling related to the loan; the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs; information related to the automated underwriting system used in evaluating an application; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; and whether the loan is primarily for a business or commercial purpose.

[447] The final rule retains reporting of commercial-purpose transactions only if they are for the purpose of home improvement, home purchase, or refinancing.

discussion also addresses comments the Bureau received on the proposed Dodd-Frank Act section 1022 analysis as well as certain other comments on the benefits or costs of provisions of the proposed rule when doing so is helpful to understanding the Dodd-Frank Act section 1022 analysis. Comments that mentioned the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision are addressed in the relevant section-by-section analysis, above. In this respect, the Bureau's discussion under Dodd-Frank Act section 1022 is not limited to this discussion in part VII of the final notice.

B. Statement of Need

1. HMDA's Purposes and the Current Deficiencies in Regulation C

Congress intended HMDA to provide the public and public officials with information to help determine whether financial institutions are serving the housing needs of their communities, to target public investment to attract private investment in communities, and to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Today, HMDA data are the preeminent data source for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for the three stated purposes of HMDA and for general market monitoring. For example, HMDA data are used by bank supervisors to evaluate depository institutions for purposes of the Community Reinvestment Act (CRA); by local community groups as the basis for discussions with lenders about local community needs; and by regulators, community groups, and researchers to identify disparities in mortgage lending that may provide evidence of prohibited discrimination. In addition, HMDA data provide a broadly representative, national picture of home lending that is unavailable from any other data source. This information permits users to monitor market conditions and trends, such as the supply and demand of applications and originations. For example, industry uses HMDA data to identify and meet the needs of underserved markets through potentially profitable lending and investment opportunities.

HMDA data include records regarding both applications by mortgage borrowers and the flow of funding from lenders to borrowers. Together, these records form a near-census of the home mortgage market for covered loans and applications, with rich geographical detail (down to census tract level) and identification of the specific financial institution for each transaction. Therefore, HMDA allows users to draw a detailed picture of the supply and demand of mortgage credit at various levels of geography and lender aggregation.

Despite its extensive benefits, serious inadequacies exist in the information currently collected under Regulation C. Although HMDA data can generally be used to calculate underwriting and pricing disparities across various protected classes and at various levels of analysis, the data lack key fields that explain legitimate underwriting and pricing decisions for mortgage loans. Therefore, in most cases, HMDA data alone cannot demonstrate whether borrowers and applicants have received nondiscriminatory treatment by financial institutions. Additional data points, such as credit score, AUS results, combined loan to value ratio (CLTV), and debt-to-income ratio (DTI), will help users better understand the reasons for approvals and denials of applications and for pricing decisions regarding originations. Similarly, current HMDA data provide certain information about borrowers (race, ethnicity, sex, and income) and loans (loan amount, purpose, loan type, occupancy, lien status, and property type), but they do not fully characterize the types of loans for which consumers are applying and do not explain why some applications are denied. The additional data points, such as non-amortizing features, prepayment penalties, and loan terms, will help fill these important information gaps.

Additionally, analysis of the cost of credit to mortgage borrowers is incomplete without the inclusion of key pricing information. The current rate spread data point requires financial institutions to report rate spread only for higher-priced mortgage loans. Currently, such loans comprise roughly 5 percent of total originations. These limited data restrict analysis of the cost of credit to a small segment of total mortgage originations and create severe selection bias as changes in the market lead to shifts in the average spread between APR values and APOR. Adding new pricing data fields, such as discount points, lender credits, origination charges, interest rate, and total loan costs will allow users to better understand the price that consumers pay for mortgages and more effectively analyze the tradeoffs between rates, points, and fees.

HMDA also currently provides limited information about the property that secures or will secure the loan. Despite being one of the most important characteristics for underwriting and pricing decisions, the value of the property securing the loan has not been collected under the current HMDA reporting requirements. The final rule addresses this deficiency by providing for reporting of the value of the property securing the covered loan or application. Current HMDA data also lack certain information about the manufactured housing segment of the mortgage market. Manufactured housing is an important source of housing for many borrowers, such as low-income and elderly borrowers, that are often financially fragile and possibly more vulnerable to unfair and predatory practices.[448] Multifamily financing for both institutional and individual borrowers serves the housing needs of multifamily unit dwellers who are mostly renters and many of whom face challenges related to housing affordability. The Bureau's final rule provides for reporting of the construction method, number of multifamily affordable units, whether a loan is or would have been secured by a manufactured home and land or by a manufactured home and not land, and the land property interest for loans or applications for manufactured housing. The improved data will help users to better understand the properties for which borrowers are receiving or being denied credit or receiving different loan pricing.

Finally, Regulation C's current transactional coverage criteria omit a large proportion of dwelling-secured loan products, including large segments of the home-equity line of credit market. In the lead-up to the financial crisis between 2000 and 2008, the total balance of closed- and open-end home-equity loans and lines of credit increased by approximately 16.8 percent annually, growing from a total of $275.5 billion to $953.5 billion. Recent research has shown that this growth in home-equity lending was correlated with subsequent home price depreciation, as

[448] *See* Mark Duda & Eric S. Belsky, *The Anatomy of the Low-Income Homeownership Boom in the 1990s* (Joint Ctr. for Hous. Studies of Harvard Univ., Low-Income Homeownership Working Paper Series 01–1, 2001) (providing evidence that manufactured housing was an important driver of the homeownership boom for the low-income population in the 1990s). Manufactured housing is also an important source of housing for the elderly. *See* Robert W. Wilden, Comment on Affordable Housing and Health Facility Needs for Seniors in the 21st Century, *Manufactured Housing and Its Impact on Seniors* (2002). For additional information on manufactured housing, including the market and regulatory environment, see the Bureau's 2014 white paper, *Manufactured-housing Consumer Finance in the U.S, available at http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.*

well as high default and foreclosure rates among first mortgages.[449] These correlations were driven in part by borrowers using home-equity lines of credit to fund investment properties, which impacted default rates when housing prices began to fall. By identifying home-equity lines of credit and loan purposes, industry, members of the public, and public officials will be better able to identify and respond to similar patterns in the future.

Congress recognized current deficiencies in HMDA and responded with the Dodd-Frank Act, which amended HMDA and provided broader reforms to the financial system. The Dodd-Frank Act's amendments to HMDA require the collection and reporting of several new data points, including information about borrowers (age and credit score), information about loan features and pricing, and, as the Bureau may determine to be appropriate, unique identifiers for loans, properties, and loan originators. It also authorizes the Bureau to require financial institutions to collect and report ''such other information as the Bureau may require.'' In doing so, Congress sought to ensure that HMDA data continue to be useful for determining whether institutions are serving the housing needs of their communities, for identifying potentially discriminatory lending patterns, and for helping public officials target public investment to attract private investment where it is needed.

2. Improving HMDA Data To Address Market Failures

HMDA is not principally focused on regulating the interactions between lenders and borrowers. Instead, HMDA requires financial institutions to report detailed information to their Federal supervisory agencies and to the public about mortgage applications, originations, and purchases at the transaction level. Such information provides an important public good that illuminates the lending activities of financial institutions and the mortgage market in general. This increased transparency allows members of the public, community groups, and public officials to better assess compliance with various Federal laws and regulations. In doing so, HMDA data help correct the potential market failures that those laws and regulations were designed to address.

From an economics perspective, the final rule's improvements to HMDA data address two market failures: (1) The under-production of public mortgage data by the private sector, and (2) the information asymmetries in credit markets.

First, HMDA data is a public good in that it is both non-rival, meaning that it may be used without reducing the amount available for others, and non-excludable, meaning that it cannot be withheld from consumers who do not pay for it. As with other public goods, standard microeconomic principles dictate that public mortgage data will be under-produced by the private sector, creating an outcome that is not socially optimal. Not surprisingly, no privately produced loan-level mortgage databases with comprehensive national coverage exist that are easily accessible by the public. Private data vendors offer a few large databases for sale that typically contain data collected from either the largest servicers or securitizers. However, none of these databases match the near-universal coverage of the HMDA data.[450] Furthermore, commercial datasets are costly for subscribers, creating a substantial hurdle for community groups, government agencies, and researchers that wish to obtain access. Importantly, these commercially available datasets typically do not identify individual lenders and therefore cannot be used to study whether specific lenders are meeting community needs or making nondiscriminatory credit decisions. In addition, all of the privately produced, commercially available mortgage databases that the Bureau is aware of cover only originated loans and exclude applications that do not result in originations. A crucial feature of the HMDA data is that they include information about applications in addition to originations and purchases. In other words, in economic terms, private mortgage databases only provide information about the market outcome resulting from the intersection of supply and demand, while HMDA data provide information about both the market outcome and the demand for credit. Thus, users can examine both supply and demand regarding mortgage credit and understand the reasons for discrepancies between supply and demand at various levels of analysis, including by lender, geographic region, type of product or feature, credit risk, income, and race or ethnicity.

Second, it is well-accepted that credit markets are characterized by information asymmetries. Mortgage products and transactions are highly complex, and lenders have a significant information advantage. Such information asymmetry affects price and quantity allocations and can contribute to types of lender behavior, such as discrimination or predatory lending, that conflict with the best interests of borrowers. In addition to disadvantaging individual consumers, information failure may also lead to herding behavior by both lenders and consumers, creating substantial systemic risk to the mortgage market and the nation's overall financial system. The recent mortgage crisis provides a vivid demonstration of such a threat to the overall safety and stability of the housing market.

These market failures are intertwined. Following the financial crisis, the Bureau and other government regulators have attempted to address misallocation of credit, enhance consumer protection, and stem systemic risk in the mortgage market through rules that regulate the business practices of financial institutions. The final rule provides an additional approach to solving failures in the mortgage market: Correcting the informational market failure. Enhanced mortgage data provide greater transparency about the mortgage market, weakening the information advantage that lenders possess relative to borrowers, community groups, and public officials. Greater information enables these groups to advocate for financial institutions to adopt fairer practices and increases the prospect that self-correction by financial institutions will be rewarded. Additional information also helps to reduce the herding behavior of both lenders and borrowers, reducing the systemic risk that has been so detrimental to the nation. In general, more information leads to more efficient outcomes. Thus, as a public good that reduces information asymmetry in the mortgage market, HMDA data are irreplaceable.

In addition to addressing the two market failures, the final rule also meets the compelling public need for improved efficiency in government operations. The new data will allow government agencies to more effectively assess financial institutions' compliance with antidiscrimination statutes, including the Equal Credit Opportunity Act and the Fair Housing Act. The new data will also help to assess certain financial institutions' performance under the CRA. Improved HMDA data will also provide valuable information that supports future market analyses and optimal policy-making.

[449] Michael LaCour-Little *et al.*, *The Role of Home Equity Lending in the Recent Mortgage Crisis,* 42 Real Estate Economics 153 (2014).

[450] Although limited transactions and institutions are excluded from HMDA, these are also typically excluded from commercial datasets.

C. Baseline for Consideration of Costs and Benefits

As stated in the proposal, the Bureau has discretion in any rulemaking to choose an appropriate scope of consideration for potential benefits and costs and an appropriate baseline. The Bureau does not believe the amendments to HMDA in section 1094 of the Dodd-Frank Act would take effect automatically without implementing rules. Financial institutions are not required to report additional data required by section 304(b)(5) and (6) of HMDA, as amended, ''before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.'' [451] Therefore, the Bureau believes that the requirements to report all of the new data elements under HMDA section 304(b)(4)–(6) cannot become effective until the Bureau completes a rulemaking with respect to the reporting of such data. Accordingly, this analysis considers the benefits, costs, and impacts of the major provisions of the final rule against a pre-Dodd-Frank Act baseline, *i.e.,* the current state of the world before the provisions of the Dodd-Frank Act that amended HMDA are implemented by an amended Regulation C. The Bureau believes that such a baseline will also provide the public with better information about the benefits and costs of the statutory amendments to HMDA. The Bureau did not receive any comments on the baseline used.

D. Coverage of the Final Rule

Each provision of the final rule applies to certain financial institutions and requires them to report data regarding covered loans secured by a dwelling that they originate or purchase, or for which they receive applications. The final rule also requires financial institutions to make these data available to the public by making available brief notices referring members of the public seeking these data to the Bureau's Web site to obtain them. The provisions for which financial institutions must report, and what information they must report, are described further in each section below.

E. Basic Approach of the Bureau's Consideration of Benefits and Costs and Data Limitations

This discussion relies on data that the Bureau obtained from industry, other regulatory agencies, and publicly available sources, as well as public comments contained in the record established by the proposed rule. As discussed in detail below, the Bureau's ability to fully quantify the potential costs, benefits, and impacts of the final rule is limited in some instances by a scarcity of necessary data.

1. Costs to Covered Persons

The final rule generally establishes which financial institutions, transactions, and data points are covered under HMDA's reporting requirements. In order to precisely quantify the costs to covered persons, the Bureau would need, for both current and future HMDA reporters, representative data on: (1) The ongoing operational costs that financial institutions incur to gather and report HMDA data; (2) one-time costs for financial institutions to update reporting infrastructure in response to the final rule; and (3) the level of complexity of financial institutions' business models and compliance systems. As stated in the proposal, the Bureau does not believe that data on HMDA reporting costs with this level of granularity is systematically available from any source. However, the Bureau has made reasonable efforts to gather as much relevant data on HMDA reporting costs as possible. Through review of the public comments and outreach efforts with industry, community groups, and other regulatory agencies, the Bureau has obtained some information about ongoing operational and one-time compliance costs, and the discussion below uses this information to quantify certain costs of the final rule. The Bureau believes that the discussion constitutes the most comprehensive assessment to date of the costs of HMDA reporting by financial institutions. However, the Bureau recognizes that these calculations may not fully quantify all costs to covered persons. The Bureau also recognizes that these calculations may not accurately represent the costs of each specific reporter, especially given the wide variation of HMDA reporting costs across financial institutions.

The Bureau's process for estimating the impact of the final rule on the cost of compliance to covered persons proceeds in three general stages. First, the Bureau attempted to understand and estimate the current cost of reporting for financial institutions, *i.e.,* the baseline cost at the institution level. Second, the Bureau evaluated the one-time costs and ongoing operational costs that financial institutions would incur in response to the final rule. Part VII.F.2, below, provides details on the Bureau's approach in performing these institution-level analyses.

The Bureau realizes that costs vary by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully represent. To conduct a cost consideration that is both practical and meaningful, the Bureau chose an approach that focuses on three representative tiers of financial institutions: Low-complexity, moderate-complexity, and high-complexity. For each tier, the Bureau produced a reasonable estimate of the cost of compliance given the limitations of the available data. Part VII.F.2, below, provides additional details on this approach. More elaboration of the Bureau's basic approach is available in the notice accompanying the proposal, the Small Business Review Panel Outline of Proposals, and the Small Business Review Panel Report.[452]

The third stage of the Bureau's consideration of costs involved aggregating up to the market-level the institution-level cost estimates from the first two stages. This aggregation required an estimate of the total number of potentially impacted financial institutions and a mapping of these institutions to the three tiers described above. The Bureau used a wide range of data in conducting these tasks, including current HMDA data, Call Reports, NMLSR data and Consumer Credit Panel data.[453] These analyses were challenging, because no single data source provided complete coverage of all the financial institutions that could be impacted, and the data quality of some sources was less than perfect. For example, estimating the number of HMDA reporters of closed-end mortgage loans that will be removed from coverage under the final rule was relatively easier than estimating the number of HMDA reporters that will be added. Similarly, the Bureau faced certain challenges in mapping the financial institutions to the three representative tiers, because data on the operational complexity of each financial

[451] HMDA section 304(n).

[452] *See* 79 FR 51731 (Aug. 29, 2014); Bureau of Consumer Fin. Prot., *Small Business Review Panel for Home Mortgage Disclosure Act Rulemaking: Outline of Proposals Under Consideration and Alternative Considered* (Feb. 7, 2014) (Outline of Proposals), *available at http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf.* Certain basic assumptions, such as wage rate and number of data fields, were updated after the proposed rule to reflect changes adopted by the final rule and more recent wage data. The Bureau also modified the tier designations for the estimated open-end reporters as a result of a separate open-end reporting threshold that was not in the proposal.

[453] NMLSR is a national registry of nondepository financial institutions, including mortgage loan originators.

institution was very limited. Where the Bureau is uncertain about the aggregate impacts, it has generally provided range estimates.

As described in greater detail below, the Bureau received many public comments on estimating the costs of certain components of the HMDA reporting process for individual financial institutions. These comments have been considered in revising the estimates contained in this part. In general, however, the comments did not provide representative data for all current and future HMDA reporters.

2. Costs to Consumers

In addition to estimating the cost impact on covered persons, the Bureau also estimated the costs to consumers. Following standard economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost per application or origination, and absorb the one-time and increased fixed costs of complying with the rule. Based on this theory, the Bureau used estimates of changes in variable costs to assess the impact of the rule on consumers.

The Bureau received feedback through the Small Business Review Panel process and public comments that, if the market permitted, some lenders would attempt to pass on to consumers the entire amount of the increased cost of compliance and not just the increase in variable costs. To the extent that this were to occur, the impact of the rule on consumers would be higher than the Bureau's estimates based on variable costs. No data were available to determine whether lenders would pass on the entire increase in compliance costs.

3. Benefits to Consumers and Covered Persons

The Bureau also assessed the benefits of the final rule both to consumers and covered persons. In general, the Bureau relied on qualitative discussions of benefits as opposed to quantitative estimates. The Bureau cannot readily quantify many of the benefits to consumers and covered persons with precision, both because the Bureau does not have the data to quantify all benefits and because the Bureau is not able to assess completely how effective the Dodd-Frank amendments to HMDA will be in achieving those benefits.

Congress intended for HMDA, including the Dodd-Frank Act amendments to the Act and the Bureau's rules implementing HMDA, to achieve compelling social benefits. As explained elsewhere in this supplementary information, the Bureau believes that the final rule appropriately implements the statutory amendments and is necessary and proper to effectuate HMDA's purposes. For consumers, the Bureau believes that the benefit of enhanced transparency will be substantial. For example, the final rule will facilitate the detection and remediation of discrimination; promote public and private investment in certain under-served markets, potentially increasing access to mortgage credit; and promote more stable and competitive markets. As a sunshine rule regarding data reporting and disclosure, most of the benefits of the enhanced rule on consumers will be realized indirectly. Quantifying and monetizing these benefits, however, would require identifying all possible uses of HMDA data, establishing causal links to the resulting public benefits, and then quantifying the magnitude of these benefits. For instance, quantification would require measuring the impact of increased transparency on financial institution behavior, the need for public and private investment, the housing needs of communities, the number of lenders potentially engaging in discriminatory or predatory behavior, and the number of consumers currently being unfairly disadvantaged and the level of quantifiable damage from such disadvantage. The Bureau is unaware of data that would enable reliable quantitative estimates of all of these effects.

Similar issues arose in attempting to quantify the benefits to covered persons. For example, the Bureau believes that the enhanced HMDA data will facilitate improved monitoring of mortgage markets in order to prevent major disruptions to the financial system, which in turn will benefit financial institutions over the long run. Such effects, however, are hard to quantify because they are largely related to future events that the final rule itself is designed to prevent. Similarly, the Bureau believes that the enhanced HMDA data will provide a better analytical basis for financial regulators and community groups to screen and monitor lenders for possible discrimination. Because of limitations in the current HMDA data fields, the potential for false positives has been widely cited by financial institutions in various HMDA-related fair lending examinations, complaints, and lawsuits. The final rule will greatly reduce the rate of false positives and the associated compliance burden on financial institutions. The Bureau believes that such benefits to financial institutions could be substantial. Nevertheless, quantifying them would require data that are currently unavailable.

In light of these data limitations, the discussion below generally provides a qualitative consideration of the benefits, costs, and impacts of the final rule. These qualitative insights into the benefits are based on general economic principles, together with the limited data available. The Bureau has made quantitative estimates where possible.

F. Potential Benefits and Costs to Consumers and Covered Persons

1. Overall Summary

In this part VII.F.1, the Bureau presents a concise, high-level overview of the benefits and costs of the final rule. This is not intended to capture all details and nuances that are provided both in the rest of the analysis and in the section-by-section analyses above but rather to provide an overview.

Major benefits of the rule. The final rule has a number of major benefits. First, the amendments will improve the usefulness of HMDA data in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. By expanding the institutional and transactional coverage, the final rule expands the scope of the market that community groups and government agencies can include in fair lending analyses. The addition of pricing data fields such as interest rate, discount points, lender credits, and origination charges improves understanding of disparities in pricing outcomes beyond that permitted by the current rate spread data field. The addition of data fields such as CLTV, credit score, DTI, and AUS results allows for a more refined analysis and understanding of disparities in both underwriting and pricing outcomes. Overall, the changes adopted make fair lending analyses more comprehensive and accurate. This is especially important for the prioritization and peer analysis or redlining reviews that regulatory agencies conduct for fair lending supervision and enforcement purposes because a consistent and clean dataset will be available for all financial institutions subject to HMDA reporting.

Second, the final rule will help determine whether financial institutions are serving the housing needs of their communities and help public officials target public investment to better attract private investment, two of HMDA's stated purposes. The expansion of institutional and transactional coverage will provide additional data helpful to the public, industry, and government in

identifying profitable lending and investment opportunities in underserved communities. Similarly, the data points related to multifamily dwellings and manufactured housing will reveal more information about these segments of the market. Borrowers who seek financing for manufactured housing are typically more financially vulnerable than borrowers financing site-built homes, and may deserve closer attention from government agencies and community groups. Although financing involving multifamily dwellings reported under HMDA is typically offered to institutional borrowers, the ultimate constituents these loans serve are mostly low- to mid-income renters who live in these financed units. Advocacy groups and government agencies have raised concerns over affordability issues faced by individuals living in multifamily dwellings, who also tend to be more financially vulnerable than individuals living in single-family dwellings. Overall, by permitting a better and more comprehensive understanding of these markets, the rule will improve the usefulness of HMDA data for assessing the supply and demand of credit, and financial institutions' treatment of applicants and borrowers, in these communities.

Third, the final rule will assist in earlier identification of trends in the mortgage market, including the cyclical loosening and tightening of credit. Expanded transactional coverage, principally through reporting of most dwelling-secured consumer-purpose transactions, including open-end lines of credit, closed-end home-equity loans, and reverse mortgages, and additional data fields, such as amortization type, prepayment penalty, and occupancy type, will improve understanding of the types of products and product characteristics received by consumers. Recent research has indicated that certain product types and characteristics may have increased the likelihood of default and exacerbated declines in housing values during the recent financial crisis. These risk factors could similarly play important roles in future credit cycles. Therefore, the additional transactions and data points will improve research efforts to understand mortgage markets, help identify new risk factors that might increase systemic risk to the overall economy, and provide early warning signals of worrisome market trends. In particular, quarterly reporting will provide regulators with more timely data, which will be of significant value for HMDA and market monitoring purposes. Timelier data will improve the identification of risks to local housing markets, the analyses of the lending activities of large volume lenders, and the effectiveness of interventions or other actions by the agencies and other public officials.

Fourth, the rule will improve the effectiveness of policy-making efforts. In response to the recent financial crisis, the government has generated a number of rules and implemented a wide array of public policy measures to address market failures and protect consumers. Additional data, timelier data, and increased institutional and transactional coverage will allow for more informed decisions by policy makers and will improve the consideration of benefits, costs, and impacts for future policy efforts, resulting in more effective policy.

Quantifying these benefits is difficult because the size of each particular effect cannot be known in advance. Given the number of mortgage transactions and the size of the mortgage market, however, small changes in behavior can have substantial aggregate effects.

Major costs of the rule. The final rule will increase ongoing operational costs and impose one-time costs on financial institutions. Financial institutions conduct a variety of operational tasks to collect the necessary data, prepare the data for submission, conduct compliance and audit checks, and prepare for HMDA-related exams. These ongoing operational costs are driven primarily by the time spent on each task and the wage of the relevant employee. The Bureau estimates that current annual operational costs of reporting under HMDA are approximately $2,500 for a representative low-complexity financial institution with a loan/application register size of 50 records; $35,600 for a representative moderate-complexity financial institution with a loan/application register size of 1,000 records; and $313,000 for a representative high-complexity financial institution with loan/application register size of 50,000 records. This translates into an estimated per-application cost of approximately $51, $36, and $6 for representative low-, moderate-, and high-complexity financial institutions, respectively. Using recent survey estimates of net income from the Mortgage Bankers Association (MBA)[454] as a frame of reference for these ongoing operational costs, the average net income per origination is approximately $2,900 for small/mid-size banks, $3,900 for medium banks, and $2,100 for large banks; and approximately $2,300 for small/mid-size independent mortgage companies, $3,000 for medium independent mortgage companies, and $1,900 for large independent mortgage companies.[455]

The final rule will affect the operational tasks associated with collecting and reporting HMDA data. More time will be required for tasks such as transcribing and checking data, and more resources will need to be devoted to tasks such as internal and external audits. The Bureau estimates that, absent the mitigation efforts discussed below, covered persons' ongoing operational costs will increase by approximately $2,600 for a representative low-complexity financial institution; $17,500 for a representative moderate-complexity financial institution; and $35,700 for a representative high-complexity financial institution, per year. These estimates do not include the increases in ongoing operational costs for financial institutions that will be required to report quarterly data or open-end lines of credit. This translates into a market-level impact of approximately $50,600,000 to $88,500,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $207,400,000 to $362,900,000.

For financial institutions that will be required to report HMDA data quarterly, which the Bureau estimates are all high-complexity financial institutions, the additional ongoing operational costs will be approximately $41,000 per year.[456] This translates into a market-level impact of approximately $1,200,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $4,900,000.

For financial institutions that originated at least 100 open-end lines of credit in each of the two preceding years and will be required to report information about open-end lines of credit, the additional ongoing operational costs from open-end

[454] These estimates come from an annual survey conducted by the Mortgage Bankers Association and the STRATMOR group as part of the Peer Group Program.

[455] The Bureau notes that these net income estimates were reported by the Mortgage Bankers Association and the STRATMOR group on a per-origination basis. The Bureau estimates the HMDA operational cost per application, not per origination.

[456] The Bureau estimates there will be 29 financial institutions that will be required to report HMDA data quarterly and that they will be high-complexity institutions. Note that this estimate refers to increased ongoing costs due to quarterly reporting beyond the costs already mentioned.

reporting will be approximately $9,500 per year for a representative low-complexity financial institution, $53,000 per year for a representative moderate-complexity financial institution, and $288,000 per year for a representative high-complexity financial institution. This translates into a market-level impact of approximately $30,900,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $126,600,000.

Combined, the impact on ongoing operational costs to reporters of closed-end mortgage loans, open-end lines of credit, and quarterly reporting translates into a market-level impact of approximately $82,600,000 to $120,600,000 per year, without accounting for any operational improvements. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $338,900,000 to $494,400,000.[457]

Accounting for operational improvements undertaken by the Bureau, the estimated net increase in ongoing operational costs will be smaller than the above estimates. The Bureau's initial outreach efforts, as well as information gathered during the Small Business Review Panel process, indicated that reportability questions, regulatory clarity, geocoding, and submission processes and edits were significant concerns to financial institutions. Along with modifying the reporting requirements, the Bureau is making operational enhancements and modifications to address these concerns. For example, the Bureau is working to consolidate the outlets for assistance; provide implementation support similar to the support provided for the title XIV and the TILA-RESPA Integrated Disclosure rules; improve points of contact for help inquiries; modify the types of edits and when edits are approved; develop a Web-based HMDA data submission and edit-check system, create a data entry tool for small financial institutions that use Data Entry Software; and develop approaches to reduce geocoding burdens. All of these enhancements will improve the submission and processing of data, increase clarity, and reduce reporting burden.

Accounting for these operational improvements, the estimated net impact of the final rule on ongoing operational costs for closed-end reporters will be approximately $1,900, $7,800, and $20,000 per year, for representative low-, moderate-, and high-complexity financial institutions, respectively. This translates into a market-level impact of approximately $26,700,000 to $41,400,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $109,500,000 to $169,800,000. For quarterly reporters, which the Bureau assumes are all high-complexity financial institutions, the estimated net impact of the final rule on ongoing operational costs will be approximately an additional $31,200 per year. This translates into an additional market-level impact of approximately $900,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $3,700,000. For open-end reporters, the estimated net impact of the final rule on ongoing operational costs will be approximately $8,600, $43,400, and $273,000 per year, for representative low-, moderate-, and high-complexity financial institutions respectively. This translates into a market-level impact of approximately $26,000,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $106,600,000. Combined, with the inclusion of the operational improvements, the impact on ongoing operational costs to reporters of closed-end mortgage loans, open-end lines of credit, and quarterly reporting translates into a market-level impact of approximately $53,600,000 to $68,300,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years across the entire market is an increase in costs of approximately $219,800,000 to $280,100,000.

In addition to impacting ongoing operational costs, the final rule will impose one-time costs necessary to modify processes in response to the new regulatory requirements. These one-time costs are driven primarily by updating software systems, training staff, updating compliance procedures and manuals, and overall planning and preparation time. The Bureau estimates that these one-time costs due to reporting of closed-end mortgage loans will be approximately $3,000 for low-complexity financial institutions, $250,000 for moderate-complexity financial institutions, and $800,000 for high-complexity financial institutions. These estimates include the impact on financial institutions that will be required to report quarterly data, but exclude the impact of expanding transactional coverage to include mandatory reporting of open-end lines of credit for financial institutions that meet the open-end reporting threshold.[458]

Industry commenters indicated that many financial institutions, especially larger and more complex institutions, process applications for open-end lines of credit in their consumer lending departments using separate procedures, policies, and data systems. In addition, because most financial institutions do not currently report open-end lines of credit, many financial institutions will have to develop completely new reporting infrastructures to comply with the switch to mandatory reporting. As a result, there will be one-time costs to create processes and systems for open-end lines of credit in addition to the one-time costs summarized above to modify processes and systems for other mortgage products.

The Bureau recognizes that the one-time cost of reporting open-end lines of credit could be substantial for many financial institutions, but lacks the data necessary to accurately quantify it. Although some commenters provided feedback on the additional burden of reporting data on these products, no commenter provided specific estimates of the potential one-time costs of reporting open-end lines of credit. The closest information was provided by one commenter that estimated that HELOC reporting would increase system fees by $117,000, which is similar to the Bureau's estimate of a $125,000 one-time cost related to reporting open-end lines of credit for moderately complex financial institutions.[459]

For this discussion, the Bureau assumes that if a lender will report both closed-end mortgage loans and open-

[457] The market-level estimates provide lower and upper bounds of the impact of the final rule on the market as a whole. To convey differences in impacts across the three representative tiers of financial institutions, the Bureau presents institution-level estimates for each tier and does not aggregate up to market-level estimates for each tier. The institution-level estimates for each tier provide more useful and accurate estimates of differences in impacts across the three representative financial institutions, because they do not require the additional assumptions used to map HMDA reporters to tiers. *See* part VII.F.2, below.

[458] The Bureau realizes that the impact to one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions and low for others.

[459] It is not clear from this comment whether the estimate excludes open-end lines of credit for commercial or business purposes other than purchase, home improvement, or refinancing, which financial institutions will not have to report.

end lines of credit, the one-time cost of integrating open-end lines of credit into HMDA reporting processes will be roughly equal to 50 percent of the one-time cost absent mandatory reporting of such products. This estimate accounts for the fact that reporting open-end lines of credit will require some new systems, extra start-up training, and new compliance procedures and manuals, but that some fixed, one-time costs could be shared with closed-end lines of business subject to Regulation C because both have to undergo systemic changes. This assumption is consistent with the Bureau's estimate that, under the open-end reporting threshold, an overwhelming majority of open-end reporters would also be reporting closed-end mortgage loans and applications simultaneously, as will be discussed below in parts VII.F.3 and VII.F.4. The Bureau therefore estimates that high- and moderate-complexity financial institutions that will be required to report open-end lines of credit while also reporting closed-end mortgage loans will incur additional one-time costs of $400,000 and $125,000, respectively, due to open-end reporting. The Bureau believes that the additional one-time costs of open-end reporting will be relatively low for low-complexity financial institutions. The Bureau believes that these institutions are less reliant on information technology systems for HMDA reporting and that they may process open-end lines of credit on the same system and in the same business unit as closed-end mortgage loans. Therefore, for low-complexity financial institutions, the Bureau estimates that the additional one-time cost created by open-end reporting is minimal and is derived mostly from new training and procedures adopted for the overall changes in the final rule. For the estimated 24 lenders that would only report open-end lines of credit but not closed-end mortgage loans, because there would be no cost sharing between open-end and closed-end reporting, the Bureau adopts the one-time cost estimates for similar-sized closed-end reporters and hence conservatively estimates that the one-time costs for these open-end reporters will be approximately $3,000 for low-complexity financial institutions and $250,000 for moderate-complexity financial institutions.[460]

The specific approach used to estimate one-time costs is based on the Bureau's outreach efforts prior to the proposal. Specifically, for low-complexity financial institutions, these outreach efforts indicated that the cost to update information technology systems will be minimal, because the processes involved in reporting are highly manual. The estimate of one-time training costs for low-complexity financial institutions is based on estimated ongoing training costs of $300 per year for staff directly responsible for data reporting. In response to the final rule, additional staff will require one-time training, but the intensity of this training will be lower than ongoing training. To capture this additional, less-intensive training, the Bureau used five times the annual training cost as the estimated one-time training cost ($1,500). Training costs provide the best-available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $1,500 as an estimate of these costs as well. Therefore, the total one-time cost estimate for low-complexity financial institutions is approximately $3,000 (= $0 + $1,500 + $1,500). This estimate varies little regardless of whether the financial institution reports open-end lines of credit.

For moderate-complexity financial institutions, outreach efforts indicated that representative costs to update information technology, excluding possible open-end reporting, will be approximately $225,000. The estimate of one-time training costs for moderate-complexity financial institutions, excluding possible open-end reporting, is based on the estimated ongoing training costs of $2,500 per year. Again, the Bureau used five times the annual training cost as the estimated one-time training cost ($12,500). Training costs provide the best-available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $12,500 as an estimate of these costs as well. The one-time cost estimate for a representative moderate-complexity financial institution is therefore approximately $250,000 (= $225,000 + $12,500 + $12,500), excluding the costs of reporting open-end lines of credit. By including the 50 percent multiplier discussed above, the Bureau assumes that the one-time cost of open-end reporting by moderate-complexity financial institutions is $125,000. Therefore, for a representative moderate-complexity financial institution that meets both the open-end and closed-end reporting thresholds, the total one-time cost estimate is $375,000.

For high-complexity financial institutions, outreach efforts indicated that representative costs to update information technology, excluding open-end reporting, will be approximately $500,000. The estimate of one-time training costs for high-complexity financial institutions, excluding open-end reporting, is based on the estimate of ongoing training costs of $30,000 per year. Again, the Bureau used five times the annual training cost as the estimated one-time training cost ($150,000). Training costs provide the best available proxy for the one-time cost to update compliance procedures and manuals, so the Bureau used $150,000 as an estimate of these costs as well. The one-time cost estimate for a representative high-complexity financial institution is therefore approximately $800,000 (= $500,000 + $150,000 + $150,000), excluding the costs of reporting open-end lines of credit. By including the 50 percent multiplier discussed above, the Bureau assumes that the one-time cost of open-end reporting by high-complexity financial institutions is $400,000. Therefore, for a representative high-complexity financial institution that meets both the open-end and closed-end reporting thresholds, the total one-time cost estimate is $1,200,000.

Based on outreach discussions with financial institutions prior to the proposal, the Bureau also believes that additional nondepository institutions that currently do not report under HMDA but will have to report closed-end mortgage loans under the final rule will incur start-up costs to develop policies and procedures, infrastructure, and training. These start-up costs for closed-end reporting will be approximately $25,000 for these financial institutions, which the Bureau assumes to be all tier 3 institutions. This startup cost differs from the one-time costs presented above, because the one-time costs mostly involve the costs from modifying existing reporting systems for existing HMDA reporters that will continue to report, while the startup cost is the cost incurred from building an entirely new reporting system for a new HMDA reporter.

The Bureau estimates the overall market impact on one-time costs for closed-end reporting to be between $650,000,000 and $1,263,200,000; the overall market impact on one-time costs for open-end reporting by financial institutions that are also closed-end reporters to be approximately

[460] The Bureau estimates that none of the open-end-only reporters will fall into the high-complexity category. The Bureau also estimates that these open-end-only reporters previously would have been reporting under HMDA as they are depository institutions that have closed-end mortgage loan/application register sizes between 1 and 24 records. Therefore the Bureau believes that they will be able to repurpose and modify the existing HMDA reporting process for open-end reporting.

$61,600,000; the overall market impact on one-time costs for open-end reporting alone to be approximately $3,000,000; and the start-up cost for nondepository institutions that will become new closed-end reporters to be approximately $11,300,000. With these four sets of numbers together, the Bureau estimates the combined overall market impact on one-time and start-up costs of the final rule is between $725,900,000 and $1,339,100,000. As a frame of reference for all of these market-level, one-time cost estimates, the total non-interest expenses for current HMDA reporters were approximately $420 billion in 2012. The upper-bound estimate of around $1,339,100,000 is approximately 0.3 percent of the total annual non-interest expenses.[461] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years. In this analysis, the Bureau amortizes all costs over five years, using a simple straight-line amortization. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time and start-up costs estimate is approximately between $177,000,000 and $326,600,000 per year.

Comments on the impact analysis in the proposed rulemaking. Throughout the Dodd-Frank Act section 1022 discussion in the proposal, the Bureau solicited feedback about data or methodologies that would enable it to more precisely estimate the benefits, costs, and impacts of the proposed changes. For example, the Bureau solicited data on the operational activities and distribution of financial institutions across the three tiers used to estimate costs, and on the one-time cost of reporting dwelling-secured home-equity products. The Bureau also invited feedback on possible ways to quantify the benefits of the proposal. The Bureau also sought information on what data points are applicable to specific products, and on whether there are any alternatives to or adjustment in each data point that would reduce burden on covered persons while still meeting the purposes of HMDA.

In general, industry commenters offered various estimates of the burden associated with the proposal for the particular financial institution represented by the commenter. For example, commenters representing different financial institutions provided estimates of the increased burden on a per-loan basis that ranged from $3 to over $73.42, 30 minutes to 60 minutes, and 70 to 100 percent. Other industry commenters framed their estimated increases in burden in terms of additional full-time employees, and provided estimates ranging from one to 15 employees. Other industry commenters attempted to estimate the overall increased cost of all aspects of the proposal, which ranged from $40,000 to $1,000,000. Other commenters framed their estimates of the overall increased costs of all aspects of the proposal on an annual basis, which ranged from $7,500 to $75,000 per year. One national trade association commenter surveyed its members and reported that implementing the data points required by the Dodd-Frank Act would represent one-time costs of $9,591 and ongoing costs of $3,842 per year, and implementing the Bureau's discretionary data points would represent one-time costs of $13,955 and ongoing costs of $4,842 per year. Finally, several industry commenters offered general estimates that the burden of reporting would double, triple, or increase exponentially. The Bureau has reviewed these estimates and considered the information reported by the commenters.

Many industry commenters criticized aspects of the proposal's Dodd-Frank Act section 1022 discussion. The most common criticism was disagreement with the accuracy of the cost estimates contained in the proposal. Several industry commenters pointed out that the proposal's cost estimates were considerably different than the actual costs involved in HMDA reporting by the individual financial institution represented by the commenter. For example, one industry commenter specifically questioned the $1,600 estimate for operational costs for low-complexity financial institutions in the proposal. As a second example, another commenter suggested that the estimated cost per transaction could not be accurate, because a small entity representative reported that it spent an average of three hours just on following up with loan officers regarding missing government monitoring information.

The Bureau notes that the current costs of reporting data under HMDA, as well as the impact of the final rule, are all institution-specific. For the purpose of the section 1022 discussion, however, it is not possible to generate separate estimates for each HMDA reporter. As a meaningful alternative, the Bureau constructed benefits, costs, and impacts for three representative institutions. As a result, estimates from specific commenters often deviated from the Bureau's estimates as expected. Sometimes, however, the cost estimates of the representative financial institution and the cost estimates of a particular commenter aligned. For example, one industry commenter described the Bureau's estimated one-time implementation costs for moderate-complexity financial institution as potentially correct. Although the estimated impacts of the proposed rule on many institutions deviated from the estimates the Bureau constructed for three representative institutions, these commenters, in general, did not disagree with the Bureau's methodology or assumptions.

Other industry commenters cited flaws with the data used to estimate the costs and benefits of the proposal. For example, one commenter explained that the discussion was based on data from current HMDA reporters and therefore may not allow accurate estimates of the impact on newly reporting nondepository institutions. Another commenter generally stated that the discussion used insufficient quantitative data. Scarcity of data in general, and of quality data in particular, posed a challenge when estimating the benefits and costs of the final rule. This was especially true when constructing estimates for newly reporting financial institutions, because it is difficult to identify exactly which institutions would have to report, and data on these institutions are limited. To the extent possible, the Bureau utilized the best and most current data from what it knew to be the relevant and available data sources. No commenter identified any additional data sources that would have improved the Bureau's estimates. Nevertheless, in response to those comments, the Bureau reanalyzed currently available data sources to better understand the impacts of the final rule. For example, following the proposal and comment period, the Bureau thoroughly analyzed Call Reports and Consumer Credit Panel data to better understand the open-end line of credit market and the impacts of requiring reporting of these products. Details of this analysis are included in the discussions on institutional and transactional coverage below.

Some industry commenters believed that the cost estimates were internally inconsistent or inconsistent with other parts of the proposal. For example, one commenter doubted that variable costs would increase by only $0.30 per application if the number of fields were essentially doubling. This comment highlights one of the many nuances of the analysis in the proposal. The $0.30

[461] The Bureau estimated the total non-interest expense for banks, thrifts, and credit unions that reported under HMDA based on Call Report data for depository institutions and credit unions and NMLSR data for nondepository institutions, all matched with 2012 HMDA reporters.

estimate is for a representative moderate-complexity institution, and captures the estimated impact on variable operational costs of having to report 37 additional data fields.[462] As indicated in Tables 2–4 below, the Bureau designated five of the 18 operational tasks as variable-cost tasks, so the $0.30 estimate only captures part of the overall impact of increasing the number of fields financial institutions must report. When assessing the impact to consumers, the Bureau focused on the variable costs based on standard economic theory that, under perfect competition, institutions will pass on increases in variable costs to consumers but will absorb the one-time costs and increases to fixed costs. No commenters disagreed with the Bureau's designation of tasks as variable-cost or fixed-cost, and no commenters suggested improvements to the formulations or assumptions the Bureau used to construct estimates for each operational task. Therefore, although the representative institution estimates may not precisely match the projected impact for a particular institution, the Bureau continues to believe that the representative estimates are a meaningful alternative to a particularized estimate for each institution, and has decided not to modify its basic methodological approach in response to this comment.[463]

Many industry commenters believed that the Bureau had not considered certain costs associated with reporting HMDA data. A few commenters believed that the methodology used to estimate costs omitted certain tasks connected to reporting, such as the increased time spent on examinations and scrubbing and re-scrubbing the data. As noted in Tables 2–4 below, the Bureau included standard annual edits and internal checks, as well as examination preparation and examination assistance as three of the 18 operational steps institutions use when preparing and reporting HMDA data. The Bureau discussed all 18 operational steps with small entity representatives during the Small Business Review Panel process and solicited feedback on these steps, along with formulations for estimating their costs, in the proposed rule. Although some institutions indicated that they used slightly different tasks, in general, all feedback received indicated that these 18 operational tasks generally reflect the steps most financial institutions take when gathering and reporting HMDA data.

Other commenters cited other elements of cost that they believed should have been included in the discussion. One industry commenter stated that the Bureau should consider the opportunity cost of time spent reporting HMDA data. Although not explicitly stated, the current estimates do consider the opportunity cost of the impact of the final rule. In response to the final rule, some current employees will trade off profit-related activities for HMDA-related activities. The opportunity cost of the final rule is the lost profit from this reallocation of staff time. Wages are typically used as a proxy for opportunity cost, and this is the measure the Bureau uses to estimate the cost of financial institutions having to reallocate employee time to HMDA-related activities in response to the final rule.

Two other commenters suggested that the Bureau include the privacy costs of the proposed rule, such as the cost associated with data breaches. These commenters provided no information that would enable accurate estimates of such costs. Because any potential data breach is an inherent part of lenders' operational risk associated with any data operation, the Bureau cannot precisely estimate its cost for the representative institutions in its three-tier approach. Financial institutions collect and maintain significant amounts of highly sensitive, personally identifiable information concerning customers in the ordinary course of business. The Bureau understands that substantially all of the new data to be compiled under the final rule either are data that HMDA reporters compile for reasons other than HMDA or are calculations that derive from such data, and must be retained by financial institutions to comply with other applicable laws. Therefore, the Bureau does not believe that costs related to the risk of data breaches substantially affect the estimates contained in this section 1022 discussion.

Several other industry commenters stated that the Bureau did not discuss potential competitive disadvantages that small financial institutions might suffer as a result of the rule, because they would be unable to distribute the cost of compliance among as large a transaction base as large financial institutions. Several industry commenters cited reports from Goldman Sachs and Banking Compliance Index figures to support claims that regulatory burdens were disproportionally affecting small financial institutions and preventing low-income consumers from accessing certain financial products. Another industry commenter cited the decline in HMDA reporters from 2012 to 2013 as evidence that small financial institutions have left the market. The Bureau presented separate impact estimates for low-, moderate-, and high-complexity institutions, broadly reflecting differences in impact across institutions of different size. For low-complexity institutions, which best represent small institutions, the estimated impact on ongoing operational costs from reporting closed-end mortgage loans, after the operational modifications the Bureau is making, is approximately $1,900 under the final rule. This translates into approximately a $38 increase in per-application costs. Based on recent survey estimates of net income from the MBA, this impact represents approximately 1.3 percent ($38/$2,900) of net income per origination for small/mid-size banks.[464] The Bureau views that amount as relatively small. In addition, the Bureau has increased the closed-end mortgage loan reporting threshold for depository institutions from one to 25, and instituted an open-end line of credit reporting threshold of 100 to alleviate burden on small financial institutions while still maintaining the benefits of HMDA data. Therefore, the Bureau concludes that the final rule is unlikely to competitively disadvantage small institutions.

A few industry commenters stated that the Dodd-Frank Act section 1022 discussion did not address the proposal's expanded coverage of commercial loans. As explained above, based on these comments and subsequent analysis, the Bureau has decided to maintain Regulation C's existing transactional coverage scheme for commercial-purpose transactions. The final rule will only require reporting of applications for, and originations of, dwelling-secured

[462] The 37 additional data fields were contained in the proposed rule. The final rule increases the total number of additional data fields. That change has been reflected in the Bureau's updated impact analyses in this final rule.

[463] However, the Bureau did update some of its basic assumptions, including wage rate and number of data fields after the proposal to reflect the final rule and more recent wage data. The Bureau also modified the tier designations for estimated open-end reporters as a result of a separate open-end reporting threshold that the Bureau instituted in the final rule in response to the public comments.

[464] According to a recent annual survey on mortgage originators by the Mortgage Bankers Association and the STRATMOR group as part of the Peer Group Program, the average net income per origination is approximately $2,900 for small/mid-size banks, $3,900 for medium banks, and $2,100 for large banks; and approximately $2,300 for small/mid-size independent mortgage companies, $3,000 for medium independent mortgage companies, and $1,900 for large independent mortgage companies.

commercial-purpose loans and lines of credit if they are for home purchase, home improvement, or refinancing purposes. The Bureau believes the volume of such transactions is fairly small and that, as a result, it is unnecessary to account separately for the costs, benefits, and impacts of commercial-purpose reporting under the final rule.

Many industry commenters argued that the degree of alignment to the MISMO data standards would increase burden. Several financial institutions reported that they would need to train their staff members in order to understand the MISMO definitions. One commenter suggested that use of the MISMO data standards should be optional because it would be burdensome for small financial institutions. A national trade association commenter reported that only 22 percent of its members reported using MISMO. These commenters have misunderstood the implications of the proposed MISMO utilization. The Bureau did not propose to, and the final rule does not require, any financial institution to use or become familiar with the MISMO data standards. Rather, the rule merely recognizes that many financial institutions are already using the MISMO standard for collecting and transmitting mortgage data and uses similar definitions for certain data points in order to reduce burden. Thus, the rule decreases costs for those institutions that already maintain data points with the same definitions and values as MISMO. Financial institutions that are unfamiliar with MISMO may not realize a similar reduction in cost, and will have to report data points not required under the current rule, but they will not experience any increased burden from reporting those HMDA data points that the Bureau has defined consistently with MISMO definitions. These institutions will not need to learn anything about MISMO because the final rule itself and the associated materials contain all the necessary definitions and instructions for reporting HMDA data.

One industry commenter believed that the cost estimates should not be amortized over five years because financial institutions may not recover these costs over that time period. The Bureau presented both non-amortized market-level estimates and market-level estimates amortized over five years. As noted earlier, it is not feasible to tailor the analysis to each financial institution subject to the rule. The Bureau believes that these results effectively provide a general picture of the impact of the final rule on costs.

Many industry commenters believed that the proposal would likely increase the cost of credit for consumers. Several of these commenters cited the cost of system modifications associated with reporting open-end lines of credit. A few commenters claimed that certain small financial institutions, such as small credit unions, small farm credit lenders, or small banks, would be faced with difficult choices, such as merging, raising prices, originating fewer loans, or exiting the market. A small number of industry commenters stated that they would double their origination fees as a result of the proposed rule. A national trade association commenter cited, among other things, a study from several individuals at the Mercatus Center at George Mason University and a survey of its members showing that small financial institutions were decreasing their mortgage lending activity in response to increased regulatory burdens. Similarly, other industry commenters pointed to a report from Goldman Sachs showing that higher regulatory costs had priced some low-income consumers out of the credit card and mortgage markets. Following standard economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost per application or origination and would absorb the one-time and increased fixed costs of complying with the rule. Overall, the Bureau estimates that the final rule will increase variable costs by $23 per closed-end mortgage application for representative low-complexity institutions, $0.20 per closed-end mortgage application for representative moderate-complexity institutions, and $0.10 per closed-end mortgage application for representative high-complexity institutions. The Bureau estimates that the final rule will increase variable costs by $41.50 per open-end line of credit application for representative low-complexity institutions, $6.20 per open-end line of credit application for representative moderate-complexity institutions, and $3 per open-end line of credit application for representative high-complexity institutions. These expenses will be amortized over the life of a loan and represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if financial institutions pass on these costs to consumers.

One national trade association commenter asked the Bureau to consider the indirect impact on rural consumers and to analyze the effect of the proposed rule combined with the other recent mortgage rules. This commenter noted that most of its members lend in rural areas and cited the Mercatus Center study mentioned above, which explained that small financial institutions in rural markets were particularly burdened by recent regulatory changes. Part VII.G.2 of the proposed rule considered the impact of the proposed rule on rural consumers. Following standard economic principles suggesting that institutions will pass on increases in variable costs, the Bureau estimated that the impact on consumers in rural areas will be small. Although some commenters suggested considering these impacts further, no commenters provided any specific estimates or suggested changes to methodology that could alter that conclusion.

Many commenters suggested that the Bureau provide an analysis of the costs and benefits of different alternatives, such as additional possible loan-volume thresholds. The Bureau has considered several alternatives and has described the costs and benefits of these alternatives, to the extent permitted by available data, in greater detail elsewhere in this final notice. As one example, Tables 5–7 in part VII.F.3 summarize the numbers of institutions and applications that would be excluded under closed-end reporting thresholds of 25, 50, 100, 250, and 500 loans. Similarly, in response to comments received, the Bureau conducted additional analyses and subsequently constructed analogous tables showing the impact of the rule on reporting of open-end lines of credit at various thresholds. These estimates are shown in Table 8.

One industry commenter claimed that the Bureau improperly discussed benefits outside of the statutory purposes of HMDA. Section 1022 of the Dodd-Frank Act, however, contains no such limitation. Instead, the statute directs the Bureau to consider, among other things, the ''potential benefits and costs to consumers and covered persons.''[465] Although the discussion of benefits is focused on the statutory purposes of HMDA, improved information about the mortgage market will have other benefits that may fall outside of a narrow reading of the statutory purposes. The Bureau believes that failing to consider these benefits would deprive the public of important

[465] 12 U.S.C. 5512(b)(2)(A)(i).

information about the potential impacts of the final rule.

Finally, one commenter urged the Bureau to gather data and define clear metrics for evaluating the success of the rule for retrospective review. This commenter offered several means of evaluation, including whether changes occur in antidiscrimination enforcement, redlining activity, false positive rates, access to credit, public and private investment, or costs to consumers. Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each ''significant'' rule or order adopted by the Bureau under Federal consumer financial law.[466] This assessment must consider the effectiveness of the rule in meeting the purposes and objectives of the Consumer Financial Protection Act of 2010 and the specific goals stated by the Bureau, and the Bureau must publish a report of its assessment within five years of the effective date of the rule.[467] Before publishing the report of its assessment, the Bureau must also invite public comment regarding the modification, expansion, or elimination of the significant rule.[468] The Bureau believes that this rule will almost certainly constitute a significant rule that warrants assessment under section 1022(d) of the Dodd-Frank Act. Therefore, it will be evaluating the effectiveness of the rule along dimensions similar to those proposed by the commenter and will provide the public with an opportunity for public comment.

2. Methodology for Generating Cost Estimates

Prior to the proposal, the Bureau reviewed the current HMDA compliance systems and activities of financial institutions. The review used a cost-accounting, case-study methodology consisting, in part, of interviews with 20 financial institutions of various sizes, nine vendors, and 15 governmental agency representatives.[469] These interviews provided the Bureau with detailed information about current HMDA compliance processes and costs.[470] This information showed how financial institutions gather and report HMDA data and provided the foundation for the approach the Bureau took to considering the benefits, costs, and impacts of the final rule. The Bureau augmented this information through the Small Business Review Panel process and through relevant academic literature, publicly available information and data sources available through the Internet,[471] historical HMDA data, Call Report Data, NMLSR Data, public comments contained in the rulemaking docket established by the proposal, and the Bureau's expertise.

Based on the outreach described above, the Bureau classified the operational activities that financial institutions currently use for HMDA data collection and reporting into discrete compliance ''tasks.'' This classification consists of 18 ''component tasks,'' which can be grouped into four ''primary tasks.'' The level of detail of the classification is intended to facilitate estimation of baseline costs and to enable rigorous analysis of the impact of the final rule across a wide range of financial institutions. The four primary tasks are described briefly below.

1. Data collection: transcribing data, resolving reportability questions, and transferring data to HMDA Management System (HMS).

2. Reporting and resubmission: Geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, creating modified loan/application register, distributing modified loan/application register, distributing disclosure statement, and using vendor HMS software.

3. Compliance and internal audits: Training, internal audits, and external audits.

4. HMDA-related exams: Examination preparation and examination assistance.

In addition to collecting information about operational activities and costs, the Bureau also used outreach efforts and the Small Business Review Panel process to better understand the potential one-time costs that HMDA reporters will incur in response to the proposed rule. Management, legal, and compliance personnel will likely require time to learn new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will take time and that the costs may vary depending on the time available. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement necessary modifications to those systems. In all cases, financial institutions will need to update training materials to reflect new requirements and activities and may have certain one-time costs for providing initial training to current employees.

The Bureau recognizes that the cost per loan of complying with the current requirements of HMDA, as well as the operational and one-time impact of the final rule, will differ by financial institution. During the Bureau's outreach with financial institutions, the Bureau identified seven key dimensions of compliance operations that were significant drivers of compliance costs. These seven dimensions are: The reporting system used; the degree of system integration; the degree of system automation; the compliance program; and the tools for geocoding, performing completeness checks, and editing. The Bureau found that financial institutions tended to have similar levels of complexity in compliance operations across all seven dimensions. For example, if a given financial institution had less system integration, then it tended to use less automation and less-complex tools for geocoding. Financial institutions generally did not use less-complex approaches on one dimension and more-complex approaches on another. The small entity representatives validated this perspective during the Small Business Review Panel meeting.

To capture the relationships between operational complexity and compliance

[466] 12 U.S.C. 5512(d).

[467] 12 U.S.C. 5512(d)(1)–(2).

[468] 12 U.S.C. 5512(d)(3).

[469] For a discussion of this methodology in the analysis of the costs of regulatory compliance, see Gregory Elliehausen, Bd. of Governors of the Fed. Reserve Sys., Staff Studies Series No. 171, *The Cost of Bank Regulation: A Review of the Evidence,* (April 1998), *available at http://www.federalreserve.gov/pubs/staffstudies/1990–99/ss171.pdf.* In addition, the Bureau recently conducted a Compliance Cost Study as an independent analysis of the costs of regulatory compliance. *See* U.S. Consumer Fin. Prot. Bureau, *Understanding the Effects of Certain Deposit Regulations on Financial Institution's Operations: Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions* (2013), *available at http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf.*

[470] The financial institutions interviewed were selected to provide variation in key characteristics like institution type (bank, credit union, independent mortgage bank), regulator, record count, submission mechanism, number of resubmissions, and other designations like whether the financial institution was a multifamily or rural lender. However the Bureau recognizes that this does not constitute a random survey of financial intuitions and the sample size might not be large enough to capture all variations among financial institutions.

[471] Internet resources included, among others, sites such as Jstor.org, which provides information on published research articles; FFIEC.gov, which provides information about HMDA, CRA, and the financial industry in general; university Web sites, which provide information on current research related to mortgages, HMDA, and the financial industry; community group Web sites, which provide the perspective of community groups; and trade group Web sites, which provide the perspective of industry.

cost, the Bureau used these seven dimensions to define three broadly representative financial institutions according to the overall level of complexity of their compliance operations. Tier 1 denotes a representative financial institution with the highest level of complexity, tier 2 denotes a representative financial institution with a moderate level of complexity, and tier 3 denotes a representative financial institution with the lowest level of complexity. For each tier, the Bureau developed a separate set of assumptions and cost estimates. All of these assumptions and cost estimates apply at the institutional level.[472] In the Outline of Proposals prepared for the Small Business Review Panel, the Bureau provided a detailed exposition of the analytical approach used for the three tiers.[473] Small business representatives attending the Small Business Review Panel did not raise substantial objections to this three-tier approach.

Table 1 below provides an overview of all three representative tiers across the seven dimensions of compliance operations:

Table 1: Types of HMDA Reporters[1]

	Tier 3 FIs tend to…	Tier 2 FIs tend to…	Tier 1 FIs tend to…
Systems	Store data in EXCEL and use DES	Use LOS and HMS	Use multiple LOS, central SoR, HMS, DES
Integration	(None)	Have forward integration (LOS to HMS)	Have backward and forward integration
Automation	Type data into DES	Use manual edit checks	Have high automation (only verifying edits manually)
Geocoding	Use FFIEC tool (manual)	Use batch processing	Use batch processing with multiple sources
Completeness checks	Check in DES only	Use LOS, which includes completeness checks	Use multiple stages of checks
Edits	Use FFIEC edits only	Use FFIEC and customized edits	Use FFIEC and customized edits run multiple times
Compliance program	Have a joint compliance and audit office	Have basic internal and external accuracy audit	Have in-depth accuracy and fair lending audit

[1] FI is "financial institution"; DES is "Data Entry Software"; LOS is "Loan Origination System"; HMS is "HMDA Management Software"; SoR is "System of Record."

Tables 2–4 convey the baseline estimates of annual ongoing operational costs as well as the underlying formulas used to calculate these estimates for the 18 operational tasks for the three representative financial institutions. The wage rate is $33 per hour, which is the national average wage for compliance officers based on the most recent National Compensation Survey from the Bureau of Labor Statistics (May 2014).[474] The number of applications for tier 3, tier 2, and tier 1 financial institutions is 50, 1,000, and 50,000, respectively. The Bureau used similar breakdowns of the 18 operational tasks for each representative financial institution to estimate the impact of the final rule on ongoing operational costs. The Bureau notes that with the assumed wage rate, number of applications, and other key assumptions provided in the notes following each table, readers of this discussion may back out all elements in the formulas provided below using the baseline estimates for each task in each tier.

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[472] The Bureau assumes that, for closed-end reporters, the tier 1 representative financial institution has 50,000 records, the tier 2 representative has 1,000 records, and the tier 3 representative has 50 records on the HMDA loan/application register. All cost estimates reflect the assumptions defining the three representative financial institutions and reflect general characteristics and patterns, including man-hours spent on each of the 18 component tasks and salaries of the personnel involved. To the extent that an individual financial institution specializes in a given product, or reports different numbers of records on its loan/application register, these representative estimates will differ from the actual cost to that particular financial institution.

[473] *See* U.S. Consumer Fin. Prot. Bureau, *Small Business Review Panel for Home Mortgage Disclosure Act Rulemaking: Outline of Proposals Under Consideration and Alternative Considered* (Feb. 7, 2014) (Outline of Proposals), *available at http://files.consumerfinance.gov/f/201402_cfpb_hmda_outline-of-proposals.pdf.*

[474] The Bureau has updated the wage rate used throughout the impact analyses accompanying this final rule to $33 per hour, up from $28 used in the proposal, in order to reflect the most recent ongoing labor costs for financial institutions. Consequently, the baseline cost estimates in this final rule are higher than what the Bureau presented in the proposal.

Table 2: Baseline Cost Estimates for 18 Operational Tasks for Tier 3 Financial Institutions

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 3 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)	Variable	$272
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)[2]	Variable	$163
	Transfer data to HMS	(hourly wage) x (hours spent transferring data to HMS per application) x (number of applications)	Variable	$272
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$119
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$523
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$82
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Fixed	$33
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Fixed	$33
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$8
	Creating modified LAR	(hourly wage) x (hours spent creating modified LAR)	Fixed	$131
	Distributing modified LAR	(hourly wage) x (hours spent distributing modified LAR) x (number of public LAR requests)[5]	Fixed	$0
	Distributing disclosure	(hourly wage) x (hours spent distributing disclosure statement) x (number of disclosure statement requests)[6]	Fixed	$0
	FI uses vendor HMS Software	Interviews indicated Tier 3 FIs use free DES instead of vendor HMS	Fixed	$0
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$327
	Internal audit	Interviews indicated Tier 3 FIs have no internal audit department	Fixed	$0
	External audit	Cost based on representative average of information	Fixed	$500
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$8
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$65

Note: Key Assumptions in the Table

1. Hourly wage = $33, number of applications = 50
2. Number of applications with reportability questions = 5
3. Number of applications with questions = 5
4. Number of applications with contrary answers to questions = 1
5. Number of modified LAR requests = 0
6. Number of disclosure statement requests = 0
7. Number of loan officers and processors = 5

Table 3: Baseline Cost Estimates for 18 Operational Tasks for Tier 2 Financial Institutions

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 2 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)	Variable	$2,724
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)[2]	Variable	$1,635
	Transfer data to HMS	Tier 2 Financial institutions use an automated transfer of data into the HMS	Variable	$0
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$817
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$10,199
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$817
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Fixed	$33
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Fixed	$131
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$8
	Creating modified LAR	(hourly wage) x (hours spent creating modified LAR)	Fixed	$262
	Distributing modified LAR	(hourly wage) x (hours spent distributing modified LAR) x (number of modified LAR requests)[5]	Fixed	$49
	Distributing disclosure	(hourly wage) x (hours spent distributing disclosure statement) x (number of disclosure statement requests)[6]	Fixed	$49
	FI uses vendor HMS Software	Estimated annual vendor HMS cost	Fixed	$8,000
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$2,615
	Internal audit	(hourly wage) x (hours spent on HMDA portion of audit	Fixed	$262
	External audit	Cost based on representative average of information	Fixed	$5,000
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$2,615
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$392

Note: Key Assumptions in the Table

1. Hourly wage = $33, number of applications = 1,000
2. Number of applications with reportability questions = 50
3. Number of applications with questions = 50
4. Number of applications with contrary answers to questions = 1
5. Number of modified LAR requests = 3
6. Number of disclosure statement requests = 3
   Number of loan officers and processors = 20

Table 4: Baseline Cost Estimates for 18 Operational Tasks for Tier 1 Financial Institutions

Primary Task	Component Tasks	Baseline Compliance Costs at a Tier 1 FI	Fixed or Variable Cost	Baseline Estimate
Data Collection	Transcribing data	(hourly wage) x (hours spent transcribing data per application) x (number of applications)	Variable	$136,208
	Resolving reportability questions	(hourly wage) x (hours spent resolving reportability questions per application) x (number of applications with reportability questions)[2]	Variable	$8,173
	Transfer data to HMS	Tier 1 Financial institutions use an automated transfer of data into the HMS	Variable	$0
Reporting and Resubmission	Complete geocoding data	(hourly wage) x (hours spent geocoding per application) x (number of applications)	Variable	$2,500
	Standard annual edit and internal check	(hourly wage) x (hours spent on edits and checks)	Fixed	$21,183
	Researching questions	(hourly wage) x (hours spent researching questions per application) x (number of applications with questions)[3]	Variable	$4,086
	Resolving question responses	(hourly wage) x (hours resolving question responses per application) x (number of applications with contrary answers to questions)[4]	Fixed	$33
	Checking post-submission edits	(hourly wage) x (hours spent checking post-submission edits per application)	Fixed	$523
	Filing post-submission documents	(hourly wage) x (hours spent filing post-submission documents)	Fixed	$8
	Creating modified LAR	(hourly wage) x (hours spent creating modified LAR)	Fixed	$523
	Distributing modified LAR	(hourly wage) x (hours spent distributing modified LAR) x (number of modified LAR requests)[5]	Fixed	$245
	Distributing disclosure	(hourly wage) x (hours spent distributing disclosure statement) x (number of disclosure statement requests)[6]	Fixed	$245
	FI uses vendor HMS Software	Interviews indicated Tier 3 FIs use free DES instead of vendor HMS	Fixed	$13,000
Audits	Training	(hourly wage) x (number of loan officers and processors)[7] x (hours of training received by each)	Fixed	$32,690
	Internal audit	(hourly wage) x (hours spent per year on audit)	Fixed	$75,318
	External audit	Interviews indicated Tier 1 FIs have no external audit of HMDA data	Fixed	$0
Exams	Exam prep	(hourly wage) x (hours spent preparing for exam)	Fixed	$15,691
	Exam assistance	(hourly wage) x (hours spent assisting during exams)	Fixed	$2,615

Note: Key Assumptions in the Table

1. Hourly wage = $33, number of applications = 50,000
2. Number of applications with reportability questions = 250
3. Number of applications with questions = 250
4. Number of applications with contrary answers to questions = 1
5. Number of modified LAR requests = 15
6. Number of disclosure statement requests = 15
7. Number of loan officers and processors = 250

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The baseline cost assumptions and cost estimates presented above reflect the current world in which most open-end lines of credit are not reported under HMDA. In the final rule, reporting of open-end lines of credit becomes mandatory for those institutions that meet all the other criteria for a ''financial institution'' in final § 1003.2(g) and originated at least 100 open-end lines of credit. The Bureau estimated that currently only about 1 percent of total open-end lines of credit secured by dwellings were reported under HMDA. Hence, the Bureau has assumed that the baseline costs for open-end reporting in the current rule are zero. The Bureau believes that the HMDA reporting process and ongoing operational cost structure for reporting open-end lines of credit under the final rule will be fundamentally similar to closed-end reporting. Therefore, for open-end reporting the Bureau adopted the three-tier approach and most of the key assumptions used for closed-end reporting above, with two modifications. First, for the representative low-complexity open-end reporter, the Bureau assumed that the number of open-end lines of credit applications would be 150. This was set to both accommodate the threshold of 100 open-end lines of credit and to reasonably reflect the likely distribution among the smallest open-end reporters based on the Bureau's estimated number

of likely open-end reporters and their volumes. Second, for the representative high-complexity open-end reporter, the Bureau assumed that the number of open-end line of credit applications would be 30,000. This reflects a reasonable distribution among the largest open-end reporters based on the Bureau's estimated number of likely open-end reporters and their volumes. The Bureau assumed that the number of open-end line of credit applications for the representative moderate-complexity open-end reporter would still be 1,000, just as for the moderate-complexity closed-end reporter. The sections on transactional and institutional coverage discuss the Bureau's approach regarding the cost of open-end line of credit reporting in more detail.

To this point, all estimates apply at the level of the institution. To aggregate institution-level information to generate cost estimates at the market level, the Bureau developed an approach to map all HMDA closed-end reporters to one of the three tiers. Because financial institutions are arrayed along a continuum of compliance costs that cannot be precisely mapped to the three representative tiers, the Bureau has adopted a conservative strategy based on a possible range of the number of financial institutions in each tier. To identify these distributions, the Bureau relied on the Bureau's best estimate of the total number of closed-end reporters and the number of total closed-end loan/application register records under the final rule. In particular, the Bureau used the total number of reporters (7,197) and the total number of loan/application register records (16,698,000) in the 2013 HMDA data.

As a first step, the Bureau identified all possible tier distributions among closed-end reporters that were consistent with the reporter and record counts, using the same loan/application register sizes adopted in the institutional-level analysis (50,000 for tier 1 institutions; 1,000 for tier 2 institutions; and 50 for tier 3 institutions). Specifically, the Bureau set the following two constraints: (1) The total number of HMDA reporters in all three tiers must sum to 7,197; and (2) using the assumed loan/application register size in each tier, the total number of loan/application register records by all reporters in all three tiers must sum to 16,698,000. Additionally, the Bureau imposed two constraints. First, the Bureau classified all 184 HMDA reporters with over 10,000 records as tier 1, because the Bureau's investigation led it to believe that these large financial institutions all possess a high level of complexity in HMDA reporting. Second, the Bureau assumed that at least 20 percent of financial institutions were tier 2 and at least 20 percent were tier 3. These assumptions helped to narrow the range of possible combinations. The Bureau also substituted the actual loan/application register size of the 184 largest HMDA reporters into the constraint for the loan/application register size of a tier 1 financial institution, further narrowing the range of possible combinations. The Bureau notes that all distributions identified are mathematically possible based on the Bureau's assumptions.

Second, for the subset of tier distributions satisfying these closed-end reporter and count constraints, the Bureau then estimated market-level costs associated with closed-end reporting based on the tier-specific assumptions and cost estimates. That is, for a given distribution derived in the first step, the Bureau multiplied the institutional-level cost estimate associated with closed-end reporting for each tier by the number of institutions in that tier, and then summed across all three tiers. The distributions with the lowest- and highest-estimated market-level costs provided the lower and upper bounds for the market-level closed-end cost estimates throughout the consideration of the benefits and costs. Specifically, the Bureau arrived at two distributions for all closed-end reporters: (1) The first distribution has 3 percent of financial institutions in tier 1, 71 percent of financial institutions in tier 2, and 26 percent of financial institutions in tier 3; and (2) the second distribution has 4 percent of financial institutions in tier 1, 28 percent of financial institutions in tier 2, and 68 percent of financial institutions in tier 3. These two distributions likely do not match the state of the world exactly. Nevertheless, for the set of assumptions described above, these distributions provide upper and lower bounds for the market-level estimates of closed-end reporting. The Bureau recognizes that this range estimate does not permit perfect precision in estimating the impact of the final rule, but rather provides ranges.

The Bureau adopted a different strategy in assigning open-end reporters to the 3 tiers that will be discussed in detail in the sections on transactional and institutional coverage.

Initial outreach efforts, as well as information gathered during the Small Business Review Panel process, indicated that compliance costs for financial institutions were impacted by the complexity of the data field specifications and the process of submitting and editing HMDA data. The public comments the Bureau received for the proposed rule did not present information contrary to that conclusion. As part of implementing the final rule, the Bureau will be implementing several operational improvements. For example, the Bureau is working to consolidate the outlets for assistance, provide implementation support similar to the support provided for title XIV and the TILA–RESPA Integrated Disclosure rules; and improving points of contact for help inquiries. In addition, the Bureau is improving the geocoding process, creating a web-based submission tool, developing a data-entry tool for small financial institutions that currently use Data Entry Software, and otherwise streamlining the submission and editing process to make it more efficient. All of these enhancements will clarify the data field specifications and reduce burden. The consideration of benefits and costs discusses how these enhancements will affect the impact of the final rule.

3. The Scope of the Institutional Coverage of the Final Rule

The final rule revises the threshold that determines which financial institutions are required to report data under HMDA. Specifically, depository and nondepository institutions that meet all the other criteria for a ''financial institution'' in final § 1003.2(g) [475] will only be required to report HMDA data if they originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years. Also, certain nondepository institutions that currently are exempt will become HMDA reporters under the final rule.

Based on data from Call Reports, HMDA, and the NMLSR, the Bureau estimates that the new threshold of 25 closed-end mortgage loans will reduce the number of reporting depository

[475] Under § 1003.2, a bank, savings association, or credit union meets the definition of financial institution if it satisfies all of the following criteria in addition to the loan-volume test described above: (1) on the preceding December 31, it had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the Act; (2) on the preceding December 31, it had a home or branch office in a MSA; (3) during the previous calendar year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on a one- to four-unit dwelling; and (4) the institution is federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. A nondepository institution meets the definition of financial institution if it (1) had a home or branch office in an MSA in the preceding calendar year and (2) satisfies the loan-volume test discussed above.

institutions by approximately 1,400 (eliminating approximately 51,000 loan/application register records) and will increase the number of reporting nondepository institutions by approximately 75–450 (adding approximately 30,000 loan/application register records), for a net reduction of 950 institutions and 21,000 records.[476] Based on data from Call Reports, HMDA, and Consumer Credit Panel data, the Bureau estimates that the new separate threshold of 100 open-end lines of credit will not require reporting by any financial institutions that are not currently reporting. The open-end threshold will require a small number of depository institutions, approximately 24, that will not be required to report HMDA data on their closed-end lending to report HMDA data on their open-end lending. These 24 financial institutions are current HMDA reporters but would have been excluded under the proposal's coverage test because they originate fewer than 25 closed-end mortgage loans annually. Combined, these 24 financial institutions will account for approximately 60,000 loan/application register records regarding open-end lines of credit. The vast majority of loan/application register records related to open-end lines of credit, approximately 900,000 loan/application register entries, will come from financial institutions that are both open- and closed-end reporters, because most financial institutions that will be required to report open-end lines of credit also will report closed-end mortgage loans.[477]

Because the final rule includes both open-end and closed-end reporting thresholds, it is difficult to discuss the impact on institutional coverage without also discussing the impact on transactional coverage. Given that the Bureau estimates that adopting a threshold of 100 open-end lines of credit will affect the number of reportable transactions more significantly than the number of reporting institutions, much of the discussion relating to the open-end reporting threshold is found in the discussion of transactional coverage in part VII.F.4, below. The discussion in this part primarily addresses the changes to institutional coverage resulting from the closed-end reporting threshold and open-end-only reporters resulting from the separate open-end reporting threshold.

Benefits to consumers. The institutional coverage threshold related to closed-end mortgage loans will have several benefits to consumers. First, the final rule will expand the coverage among nondepository institutions for HMDA reporting by removing the 100-loan threshold applicable to nondepository institutions in the existing rule. Traditionally, nondepository institutions have been subject to less scrutiny by regulators than depository institutions, and little is known about the mortgage lending behavior of nondepository institutions that fall below the current reporting thresholds. By illuminating this part of the mortgage market, the final rule will provide regulators, public officials, and members of the public with important information. For example, it is possible that small nondepository institutions are serving particular market segments or populations that would benefit from more oversight by public officials and community groups. This oversight can be enhanced only if more information is revealed about the segments, and the change in institutional coverage in the final rule is designed to fill this vacuum. To the extent that such increased data and transparency enhances social welfare, consumers served by these nondepository institutions will benefit.

Similarly, expanding coverage among nondepository institutions could improve the processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination or investigation. HMDA data also provide information that is used in fair lending reviews of mortgage lenders for potential violations of antidiscrimination statutes, including ECOA and the Fair Housing Act. This is especially true for redlining analyses, which compare lending patterns across lenders within given markets. Current deficiencies in HMDA's institutional coverage leave gaps in the data used by regulators for conducting fair lending prioritization and redlining analyses to compare lenders or markets. Because many depository and nondepository institutions with similar loan volumes are similar in other respects, excluding some nondepository institutions with fewer than 100 loans may weaken the understanding of markets needed for prioritization and redlining analyses. Consequently, increased reporting among nondepository institutions may increase the ability to identify fair lending risk.

The final rule will also improve the ability to determine whether financial institutions are serving the housing needs of their communities. Information from data sources such as the United States Census, Call Reports, and the NMLSR can be used to help identify the housing needs of the communities that lenders serve. HMDA data provide a supply-side picture of how well each financial institution is meeting these housing needs. Indeed, HMDA data may be analogized to a census of mortgage demand and supply for covered financial institutions. However, such data currently paints only a partial picture of the market served by financial institutions with 25 to 99 closed-end mortgage loans. The addition of nondepository institutions with between 25 and 99 closed-end mortgage loan originations will provide an improved understanding of the mortgage markets where these financial institutions operate, thereby enhancing efforts to assess whether these institutions, and financial institutions overall, are serving the housing needs of their communities.

Costs to consumers. The revised threshold will not impose any direct costs on consumers. Consumers may bear some indirect costs if financial institutions that will be required to report under the final rule pass on some or all of their costs to consumers. Following standard microeconomic

[476] Estimates of the number of depository institutions that will no longer be required to report closed-end mortgage loans under HMDA, as well as the reduction in loan/application register volume associated with the 25 closed-end mortgage loan threshold can be obtained directly from current HMDA data and are therefore relatively reliable. It is difficult to estimate how many nondepository institutions will become HMDA reporters under the final rule's closed-end reporting threshold. These institutions are not currently HMDA reporters, so estimating how the final rule will affect them requires gathering, and making assumptions about, data and information from other sources. There are various data quality issues related to these sources, so the estimates for nondepository institutions should be viewed as the best-effort estimates given the data limitations. To avoid underestimating the costs of the final rule, the Bureau's quantitative estimates are based on the assumption that 450 nondepository institutions will become HMDA reporters, which is the high end of the range.

[477] The Bureau believes that few nondepositories engage in open-end lending. Determining the exact number of depository institutions that will be required to report under HMDA because of the open-end-line-of-credit reporting threshold requires information that is not readily available. As discussed further below, the Bureau had to rely on certain assumptions to derive the estimated number of depository institutions that will report open-end lines of credit. Based on recent HMDA data, Call Reports, credit union Call Reports, and Consumer Credit Panel data, the Bureau estimates there will be approximately 749 financial institutions that will report open-lines of credit, including approximately 725 depositories that will also report closed-end mortgage loans. In total they likely will report approximately 900,000 loan/application register records. Much of that detail is discussed in the section on transactional coverage. Expansions or contractions of the number of financial institutions, or changes in product offerings and demands between now and implementation of the final rule may alter these estimated impacts.

principles, the Bureau believes that these institutions will pass on increased variable costs to future mortgage applicants but will absorb start-up costs, one-time costs, and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive.[478]

The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, the following five operational steps affect variable costs: Transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions. The primary impact of the final rule on these operational steps is an increase in time spent per task. Overall, the Bureau estimates that the impact of the final rule on variable costs per closed-end application is approximately $25 for a representative tier 3 financial institution, $0.40 for a representative tier 2 financial institution, and $0.10 for a representative tier 1 financial institution.[479] The 75–450 nondepository institutions that will now be required to report closed-end mortgage loans and applications have small origination volumes, so the Bureau expects most of them to be tier 3 financial institutions. Hence, based on microeconomics principles, the Bureau expects that a representative nondepository financial institution affected by this final rule will pass on to mortgage borrowers costs of approximately $25 per application. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if the additional nondepository institutions that must begin reporting pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that whether these costs were passed on would depend on the competiveness of the market in which they operate, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products, leave geographic or product markets, or spend less time on customer service. Many industry commenters echoed similar sentiments that the proposal would likely increase the cost of credit for consumers. A few commenters noted that small financial institutions in general would be required to merge, raise prices, make fewer loans, or exit markets. To the extent that the market is less than perfectly competitive and financial institutions are able to pass on a greater amount of these compliance costs, the cost to consumers will be slightly larger than the estimates described above. Even so, the Bureau believes that the potential costs that will be passed on to consumers are small.

The final rule may impose additional costs on consumers as well. Reducing the number of depository institutions required to report will reduce HMDA's overall coverage of the mortgage market. This reduction will reduce the usefulness of HMDA data for assessing whether lenders are meeting the housing needs of their communities and highlighting opportunities for public and private investment. This reduction may also affect the usefulness of HMDA for identifying possible discriminatory lending patterns—especially for redlining analyses, which focus on market-level data and data on competitors. To better understand these potential costs, the Bureau analyzed the characteristics of the depository institutions that would be excluded from reporting closed-end mortgage loans by the 25-loan threshold, and compared these characteristics to depository institutions that currently report and would not be excluded. This type of analysis is possible because the final rule reduces both the number of closed-end reporting depository institutions and the closed-end mortgage loans that they report, and the total universe reported under the current regulation is known. For this exercise, the Bureau excluded purchased loans from its comparisons.

Overall, the Bureau found that, relative to depository institutions that will continue to report under the final rule (*i.e.,* reporting depositories), applications for closed-end mortgage loans at excluded depository institutions were more likely to be (1) made to the depository institutions supervised by the FDIC or NCUA (over 42 and 41 percent, respectively, compared to 13.74 percent and 10.21 percent at reporting depositories); (2) second-lien (over 9 percent, compared to 2.96 percent at reporting depositories); (3) home improvement (over 23 percent, compared to 6.83 percent at reporting depositories);[480] (4) non-owner-occupied (over 22 percent, compared to 11.86 at reporting depositories); (5) manufactured housing or multifamily (slightly less than 4 and 5 percent, respectively, compared to 1.83 percent and 0.42 percent at reporting depositories); (6) portfolio loans (approximately 88 percent, compared to roughly 33 percent at reporting depositories); and (7) higher-priced (nearly 13 percent, compared to 2.92 percent at reporting depositories). To the extent that these excluded loans are different from those that remain and these loans serve a somewhat different group of consumers that are more disadvantaged, the loss of those records will impose a cost on this group of consumers as less information may be available to the government, community groups, and researchers to serve their unique needs.

Excluding small-volume depository institutions currently reporting under HMDA also impacts the volume of records available for analysis at the market level. The geographic data fields currently in the HMDA data provide four possible market levels: State, MSA, county, and census tract. Overall, analysis of these markets shows that for most markets, a small percentage of loan/application register records would be lost by excluding small-volume depository institutions for closed-end mortgage loan reporting.[481] But the lost records are more likely to be in certain States, territories, and MSAs. The percentage excluded is greater than 1 percent for Alaska and Puerto Rico, which showed the highest percentage of

[478] If markets are not perfectly competitive or financial institutions are not profit maximizers, then the costs that a financial institutions may pass on may differ. For example, financial institutions may attempt to pass on one-time costs and increases in fixed costs, or they may not be able to pass on variable costs.

[479] These cost estimates do not incorporate the impact of operational improvements. Incorporating these additional operational changes will reduce the estimated impact on variable costs. Therefore, the estimates we provided are upper bound estimates of the increase in variable costs that financial institutions will pass on to consumers. These estimates of the impact of the final rule on variable costs per application show the combined impact of all components of the final rule and therefore differ from estimates of the impact on variable costs presented below, which show the impact of specific components of the final rule. In addition, these estimates focus only on the variable-cost tasks, while other estimates incorporate both variable- and fixed-cost tasks.

[480] These totals include applications for both secured and non-dwelling-secured home improvement loans, even though non-dwelling-secured home improvement loans will not be reported under the final rule. To the extent that excluded depository institutions engage in more non-dwelling-secured home improvement lending than reporting depositories, these numbers will overestimate the difference in reportable home improvement applications by the two types of institutions under the final rule.

[481] This analysis includes purchased loans.

excluded records at 1.93 percent and 7.32 percent, respectively. Ranked by the percentage of loan/application register records that would be excluded for each MSA, the 75th percentile was 0.35 percent, suggesting that for 75 percent of MSAs, excluding small depository institutions would exclude less than 0.35 percent of total loan/application register records. The 95th percentile was 1.05 percent, suggesting that for 5 percent of MSAs, excluding small depository institutions would exclude more than 1.05 percent of total loan/application register records. The five MSAs with the most excluded records were all in Puerto Rico. Census tracts have smaller loan volumes than States and MSAs, so the variation in percentages is naturally expected to be higher. Ranked by the percentage of loan/application register records that would be excluded, the 75th and 95th percentiles for census tracts were 0.47 percent and 2.65 percent, respectively. To the extent that government, community groups, and researchers rely on HMDA data relevant to these particular markets to further social goals, the loss of this information will impose a cost on the consumers in these markets.

Benefits to covered persons. The final rule will provide some cost savings to depository institutions that will be excluded under the revised closed-end mortgage loan-volume threshold. The Bureau estimated 1,400 depository institutions will be excluded from reporting closed-end mortgage loans and applications under the closed-end reporting threshold in the final rule. The Bureau also believes that these 1,400 depository institutions most likely would not be subject to open-end reporting under the open-end reporting threshold. Therefore, these depository institutions will no longer incur current operational costs associated with gathering and reporting HMDA data. The Bureau expects most of these depository institutions to be tier 3 financial institutions, given the small volume of home purchase, refinance, and home improvement mortgages they originate. The Bureau estimates that the current annual operational costs of reporting under HMDA are approximately $2,500 for representative tier 3 financial institutions with a loan/application register size of 50 records. This translates into a market-level benefit of approximately $3,500,000 (= $2,500 * 1,400) per year. Using a 7 percent discount rate, the net present value of this impact savings over five years is approximately $14,400,000.[482]

In addition to avoiding ongoing costs, the 1,400 excluded depository institutions will not incur the one-time costs necessary to modify processes in response to the final rule. The Bureau estimates that these one-time costs from reporting closed-end mortgage loans are, on average, $3,000 for tier 3 financial institutions. Assuming that all 1,400 depository institutions are tier 3 institutions, this yields an overall market savings of $4,200,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time savings is approximately $17,200,000.

One-time costs to covered persons. The estimated additional 75–450 nondepository institutions that will have to report closed-end mortgage loans under the final rule will incur start-up costs to develop policies and procedures, infrastructure, and training. Given the relatively small origination volume by these nondepository institutions, the Bureau expects most of them to be tier 3 financial institutions. Based on outreach discussions with financial institutions prior to the proposal, the Bureau believes that these start-up costs for closed-end reporting will be approximately $25,000 for tier 3 financial institutions.[483] This yields an overall market cost of approximately $11,250,000 (= 450 * $25,000). Using a 7 percent discount rate and a five-year amortization window, the annualized start-up cost is $46,100,000.

The estimated 24 financial institutions meeting the open-end reporting threshold but falling below the closed-end reporting threshold will incur one-time costs from building reporting systems, including developing policies and procedures, infrastructure, and training for reporting open-end lines of credit.[484] The Bureau has estimated that these one-time costs will be approximately $3,000 for low-complexity financial institutions, $250,000 for moderate-complexity financial institutions, and $800,000 for high-complexity financial institutions. The Bureau assumes 12 of these institutions are tier 3 institutions and 12 are tier 2 institutions. This yields an overall one-time cost of approximately $3,000,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is approximately $740,000 per year.

Ongoing costs to covered persons. The estimated 75–450 nondepository institutions that will have to report closed-end mortgage loans under the final rule will incur the operational costs of gathering and reporting data. Including both current operational costs and the impact of the final rule, the Bureau estimates that these operational costs will total approximately $5,100 for a representative tier 3 financial institution per year, without incorporating the Bureau's operational improvements. This yields an overall market impact of approximately $2,300,000 (= 450 * $5,100). Using a 7 percent discount rate, the net present value of this cost over five years is approximately $9,400,000. With operational improvements, the Bureau estimates that these operational costs will total approximately $4,400 for a representative tier 3 financial institution per year. This yields an overall market impact of approximately $2,000,000 (= 450 * $4,400). Using a 7 percent discount rate, the net present value of this cost over five years is approximately $8,100,000.

The estimated 24 depository institutions that will have to report open-end lines of credit under the final rule but not closed-end mortgage loans will incur the operational costs of gathering and reporting data for open-end lines of credit. The Bureau estimates that the operational costs for depository institutions will total approximately $8,600 per year for a representative tier 3 open-end reporter and $43,400 per year for a representative tier 2 open-end reporter, and assumes current operational cost is equal to zero for open-end reporting. Assuming 12 of these 24 financial institutions are tier 3 open-end reporters

[482] Note that the figures above refer to cost savings by the newly excluded small-volume depository institutions, assuming costs based on the current Regulation C reporting system. With the changes in the final rule, along with the operational improvements that the Bureau is making, the impact of the final rule on operational costs will be approximately $1,900 per year for a representative tier 3 financial institution. This translates into a market-level savings of approximately $2,660,000 (= $1,900 * 1,400) per year. Using a 7 percent discount rate, the net present value of this savings over five years is approximately $10,900,00.

[483] Note this start-up cost differs from the one-time cost presented previously, because the one-time cost mostly involves the costs from modifying an existing reporting system for an existing reporter, while the startup cost is the cost incurred from building an entirely new reporting system for a new HMDA reporter.

[484] The Bureau estimates that these open-end-only reporters are not technically new HMDA reporters in the sense that they previously would have been reporting under HMDA because they are depository institutions that have closed-end mortgage loan/application register sizes between 1 and 24. Therefore, the Bureau believes they will be able to repurpose and modify the existing HMDA reporting process for open-end reporting. The Bureau estimates none of these open-end-only reporters will be high-complexity financial institutions.

and the rest are tier 2 open-end reporters, this yields an overall market impact of approximately $620,000 (= 12 * $8,600 + 12 * $43,400). Using a 7 percent discount rate, the net present value of this cost over five years is approximately $2,600,000. These estimates incorporate all of the Bureau's operational improvements.

Alternatives considered. Regarding closed-end mortgage loans, the Bureau considered several reporting thresholds higher than 25 loans. The Bureau sought to exclude financial institutions whose data are of limited value in the HMDA dataset, thus ensuring that the institutional coverage criteria do not impair HMDA's ability to achieve its purposes, while also minimizing the burden for financial institutions. Specifically, these alternative thresholds were evaluated according to the extent to which they balanced several important factors, including simplifying the reporting regime by establishing a uniform loan-volume threshold applicable to both depository and nondepository institutions; eliminating the burden of reporting from low-volume depository institutions while maintaining sufficient data for analysis at the national, local, and institutional levels; and increasing visibility into the home mortgage lending practices of nondepository institutions.

Table 5, below, provides estimates of the coverage among depository institutions at various closed-end reporting thresholds. Table 6 provides estimates of the loss of HMDA data for certain geographic markets. Table 7 provides estimates of the coverage among nondepository institutions at various closed-end reporting thresholds.

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Table 5. Estimates of Depository Institution Coverage by Closed-End Mortgage Loan Thresholds[1]

		Potential Closed-End Mortgage Loan Volume Thresholds					
	Year	No change	25	50	100	250	500
Number of Institutions	2013	6,382	-1,400 (-22%)	-2,300 (-36%)	-3,400 (-53%)	-4,700 (-74%)	-5,400 (-85%)
	2012	6,478	-1,600 (-25%)	-2,500 (-39%)	-3,500 (-54%)	-4,600 (-71%)	-5,400 (-83%)
	2005	7,485	-1,700 (-23%)	-2,800 (-37%)	-4,100 (-55%)	-5,700 (-76%)	-6,000 (-86%)
Number of Records	2013	11,089,280	-51,000 (-<1%)	-125,000 (-1%)	-256,000 (-2%)	-634,000 (-6%)	-1,070,000 (-10%)
	2012	12,619,828	-67,000 (-<1%)	-142,000 (-1%)	-275,000 (-2%)	-593,000 (-5%)	-1,057,621 (-8%)
	2005	22,161,000	-105,100 (-<1%)	-190,900 (-1%)	-395,400 (-2%)	-871,100 (-4%)	-1,336,800 (-6%)

[1] In Tables 5 and 6, identification of depository institutions and nondepository institutions for 2013 and 2012 is based on 2012 data from HMDA, Call Reports, and NMLSR data, as well as internal analyses matching HMDA reporters to institution type; for 2005, it is based on agency code = 7. Number of Records includes purchased loans. The MSA count reflects the total number of state/MSA pairs, not just the number of MSAs. For the 2012 and 2013 estimates, geographic specifications are from the 2010 Census and the LMI designation is based on 2012 CRA data. For the 2005 estimates, geographic specifications are from the 2000 Census and the LMI designation is based on 2005 CRA data. The analysis does not incorporate changes to transactional coverage.

Table 6. Estimates of Loss of Data in Communities[1]

		Potential Closed-End Mortgage Loan Volume Thresholds					
	Year	No change	25	50	100	250	500
States[2] losing more than 1% of data	2013	0 (52 total)	2	6	37	50	51
	2012	0 (52 total)	2	7	33	50	52
	2005	0 (52 total)	1	1	17	47	50
MSAs losing more than 10% of data	2013	0 (494 total)	0	1	3	57	185
	2012	0 (494 total)	0	1	3	37	160
	2005	0 (487 total)	0	0	3	25	75
Census Tracts losing 20% of data	2013	0 (73,841 total)	46	125	366	1,846	5,333
	2012	0 (73,841 total)	67	159	492	1,779	4,744
	2005	0 (65,938 total)	33	74	159	1,018	1,757
LMI Tracts losing 20% of data	2013	0 (21,882 total)	23	51	145	708	1,772
	2012	0 (21,882 total)	36	75	201	730	1,654
	2005	0 (18,367 total)	12	20	45	295	461

[1] Identification of depository institutions and nondepository institutions for 2013 and 2012 is based on 2012 data from HMDA, Call Reports, and NMLSR data, as well as internal analyses matching HMDA reporters to institution type; for 2005, it is based on agency code = 7. Number of Records includes purchased loans. The MSA count reflects the total number of state/MSA pairs, not just the number of MSAs. For the 2012 and 2013 estimates, geographic specifications are from the 2010 Census and the LMI designation is based on 2012 CRA data. For the 2005 estimates, geographic specifications are from the 2000 Census and the LMI designation is based on 2005 CRA data. The analysis does not incorporate changes to transactional coverage.

[2] The State total includes the District of Columbia and Puerto Rico.

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Table 7. Estimates of Nondepository Institution Coverage by Closed-End Mortgage Loan Thresholds[1]

	Potential Closed-End Mortgage Loan Volume Thresholds					
	No change	25	50	100[2]	250	500
Number of Institutions	1,115	+75-450 (6-40%)	+ 45-270 (4-24%)	+0	-402 (-39%)	-497 (-48%)
Number of Records	2,990,548	+30,000-191,000 (1-6%)	+20,000-125,000 (1-4%)	+0	-397,100 (-13%)	-455,700 (-15%)

[1] Estimates for coverage at the 25- and 50-loan volume thresholds were developed using NMLSR data and 2013 HMDA data. Estimates for coverage at the 100-, 250-, and 500-loan volume thresholds were developed using 2013 HMDA data and Call Report data.
[2] Since the current non-depository institution coverage scheme includes a 100-loan test, along with an asset and other volume thresholds, the number of covered loans and reporting financial institutions likely will not change significantly if the Bureau were to adopt a 100-loan test.

The Bureau believes that a threshold of 25 closed-end mortgage loans reduces burden on small depository institutions while preserving important data about communities and improving visibility into the lending practices of nondepository institutions. As shown above in Table 5, the 25-loan threshold will achieve a significant reduction in burden by eliminating reporting by more than 20 percent of depository institutions that are currently reporting. As described in greater detail throughout this discussion, the Bureau estimates that the most significant driver of costs under HMDA is the requirement to report, rather than any specific aspect of reporting, such as the number or complexity of required data fields or the number of entries. For example, the estimated annual ongoing costs of reporting closed-end mortgage loans under the final rule are estimated to be approximately $4,400 for a representative tier 3 financial institution, accounting for the Bureau's operational improvements. About $2,300 of this annual ongoing cost is comprised of fixed costs. As a comparison, each required data field accounts for approximately $42 of this annual ongoing cost. Thus, a threshold of 25 closed-end mortgage loans provides a meaningful reduction in burden by reducing the number of depository institution reporters.

Higher thresholds would further reduce burden but would produce data losses that would undermine the benefits provided by HMDA data. One of the most substantial impacts of any low loan-volume threshold is that it reduces information about lending at the community level, including information about vulnerable consumers and the origination activities of smaller lenders. Public officials, community advocates, and researchers rely on HMDA data to analyze access to credit at the neighborhood level and to target programs to assist underserved communities and consumers. For example, Lawrence, Massachusetts identified a need for homebuyer counseling and education based on HMDA data, which showed a high percentage of high-cost loans in the area compared to surrounding communities.[485] Similarly, HMDA data helped bring to light discriminatory lending patterns in Chicago neighborhoods, resulting in a large discriminatory lending settlement.[486] In addition, researchers and consumer advocates analyze HMDA data at the census-tract level to identify patterns of discrimination at a national level.[487] Higher closed-end loan-volume thresholds would eliminate data about more communities and consumers. At a closed-end reporting threshold of 100, according to 2013 HMDA data, the number of census tracts that would lose 20 percent of reported data would increase by almost eight times over the number under a closed-end reporting threshold of 25 loans. The number of affected low- to-moderate-income tracts would increase six times over the number at the 25-loan level.

[485] *See* City of Lawrence, Massachusetts, HUD Consolidated Plan 2010–2015, at 68 (2010), *http://www.cityoflawrence.com/Data/Sites/1/documents/cd/Lawrence_Consolidated_Plan_Final.pdf.* Similarly, in 2008 the City of Albuquerque used HMDA data to characterize neighborhoods as ''stable,'' ''prone to gentrification,'' or ''prone to disinvestment'' for purposes of determining the most effective use of housing grants. *See* City of Albuquerque, Five Year Consolidated Housing Plan and Workforce Housing Plan 100 (2008), *available at http://www.cabq.gov/family/documents/ConsolidatedWorkforceHousingPlan20082012final.pdf.* As another example, Antioch, California, monitors HMDA data, reviews it when selecting financial institutions for contracts and participation in local programs, and supports home purchase programs targeted to households purchasing homes in Census Tracts with low loan origination rates based on HMDA data. *See* City of Antioch, California, Fiscal Year 2012–2013 Action Plan 29 (2012), *http://www.ci.antioch.ca.us/CitySvcs/CDBGdocs/Action%20Plan%20FY12-13.pdf. See, e.g.,* Dara D. Mendez et al., *Institutional Racism and Pregnancy Health: Using Home Mortgage Disclosure Act Data to Develop an Index for Mortgage Discrimination at the Community Level,* 126 Pub. Health Reports (1974–) Supp. 3, 102–114 (Sept./Oct. 2011) (using HMDA data to analyze discrimination against pregnant women in redlined neighborhoods), *available at http://www.publichealthreports.org/issueopen.cfm?articleID=2732.*

[486] *See, e.g.,* Yana Kunichoff, *Lisa Madigan Credits Reporter with Initiating Largest Discriminatory Lending Settlements in U.S. History* (June 14, 2013), *http://www.chicagonow.com/chicago-muckrakers/2013/06/lisa-madigan-credits-reporter-with-initiating-largest-discriminatory-lending-settlements-in-u-s-history/* (''During our ongoing litigation . . . the Chicago Reporter study looking at the HMDA data for the City of Chicago came out . . . It was such a startling statistic that I said . . . we have to investigate, we have to find out if this is true . . . We did an analysis of that data that substantiated what the Reporter had already found . . . [W]e ultimately resolved those two lawsuits. They are the largest fair-lending settlements in our nation's history.'')

[487] *See, e.g.,* California Reinvestment Coalition, et al., *Paying More for the American Dream VI: Racial Disparities in FHA/VA Lending, at http://www.woodstockinst.org/research/paying-more-american-dream-vi-racial-disparities-fhava-lending.* Likewise, researchers have analyzed GSE purchases in census tracts designated as underserved by HUD using HMDA data. James E. Pearce, *Fannie Mae and Freddie Mac Mortgage Purchases in Low-Income and High-Minority Neighborhoods: 1994–96,* Cityscape: A Journal of Policy Development and Research (2001), *available at http://www.huduser.org/periodicals/cityscpe/vol5num3/pearce.pdf.*

The Bureau also believes that it is important to increase visibility into nondepository institutions' activity given the lack of available data about lower-volume nondepository institutions' mortgage lending practices. A uniform closed-end reporting threshold of fewer than 100 loans annually will expand nondepository institution coverage, because the current test requires reporting by all nondepository institutions that meet the other applicable criteria and originate 100 loans annually.[488] Any closed-end reporting threshold set at 100 loans would not provide any enhanced insight into nondepository institution lending, and a threshold above 100 closed-end mortgage loans would decrease visibility into nondepository institutions' practices and hamper the ability of HMDA users to monitor risks posed to consumers by those institutions. The threshold of 25 closed-end mortgage loans, however, achieves a significant expansion of nondepository institution coverage, with up to a 40 percent increase in the number of reporting institutions.

The Bureau's proposal did not include an open-end line of credit threshold for institutional coverage. Under the Bureau's proposal, an institution that met the 25 closed-end mortgage loan threshold (and the other criteria for institutional coverage) would have been required to report all of its open-end lines of credit, even if its open-end lending volume was very low. On the other hand, institutions that did not meet the 25 closed-end mortgage loan threshold but that had significant open-end lending volume would not have been HMDA reporters. As noted, the Bureau received a large number of comments expressing concerns related to the burden of reporting under this threshold. In response to these concerns and in an attempt to reduce reporting by financial institutions that have originated at least 25 closed-end mortgage loans but only a very small number of open-end lines of credit, the final rule adopts a separate open-end reporting threshold. A financial institution will be required to report open-end lines of credit only if its open-end origination volume exceeds this threshold.

When setting this separate threshold, the Bureau considered several alternatives to the final threshold of 100 open-end lines of credit. In doing so, the Bureau sought to exclude financial institutions whose data are of limited value while ensuring that the institutional coverage criteria for mandatory reporting of open-end lines of credit do not impair HMDA's ability to achieve its purposes. Specifically, these alternative thresholds were evaluated according to the extent to which they balanced several important factors, including limiting the number of open-end reporters in general, limiting the number of small-volume open-end reporters whose data are of limited use in particular, and limiting the number of open-end reporters that would not have reported closed-end mortgage loans under HMDA, while maintaining sufficient data for analysis with adequate market coverage.

Table 8, below, provides estimates of the coverage among depository institutions at various open-end reporting thresholds. It is the Bureau's belief that most nondepository institutions do not originate dwelling-secured open-end lines of credit. The Bureau notes that no single data source accurately reports the number of originations of open-end lines of credit, as that term is defined in the final rule. The Bureau had to use multiple data sources, including credit union Call Reports, Call Reports for banks and thrifts, HMDA data, and Consumer Credit Panel data, in order to develop estimates about open-end originations for currently reporting depository institutions.[489]

Table 8. Estimates of Depository Institution Coverage by Open-End Line of Credit Thresholds

Potential Open-End-Line-of-Credit Threshold	Number of Reporting Financial Institutions	Number of Open-End Lines of Credit (rounded to nearest ten thousand)	Percentage of Market Covered	Number of Reporting Financial Institutions that also Report Closed-End Mortgage Loans	
				Not a Closed-End Reporter	Closed-End Reporter
Proposed	4, 146	910,000	94%	0	4,146
25	1, 770	900,000	93	103	1,667
50	1, 155	870,000	91	55	1,100
100	749	850,000	88	24	725
500	231	730,000	76	3	228
1000	123	650,000	68	0	123
5000	25	440,000	46	0	25

The first row under the heading corresponds to the estimated coverage under the proposed rule where any financial institution that satisfied the proposed 25-closed-end mortgage loan threshold[490] would have reported open-end lines of credit. The other rows correspond to various other thresholds the Bureau considered for an independent open-end reporting threshold.

The Bureau believes that a threshold of 100 open-end lines of credit reduces burden on financial institutions while preserving important coverage and visibility into the market for dwelling-secured lines of credit. As shown above

[488] In addition, nondepository institutions that originate fewer than 100 applicable loans annually are required to report if they have assets of at least $10 million and meet the other criteria. *See* 12 CFR 1003.2 (definition of financial institution).

[489] For this exercise, the Bureau limits its analysis to current HMDA reporters, because it believes that those depository institutions would be the ones who would have met all other HMDA reporting requirements, such as location and asset tests, as well as origination of at least one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one- to four-unit dwelling. In general, credit union Call Reports provide the number of originations of open-end lines of credit secured by real estate but exclude lines of credit in the first lien status and may have included business loans that will be excluded from HMDA reporting according to the final rule. Call Reports for banks and thrifts report only the balance of the home-equity lines of credit at the end of reporting period but not the number of originations in the period.

[490] For this analysis, the Bureau has not considered reverse mortgages that are structured as open-end lines of credit. Reverse mortgages cannot be identified within the current HMDA data. It is the Bureau's belief that most reverse mortgages currently are not reported under HMDA.

in Table 8, compared to the proposal, the open-end reporting threshold reduces the number of open-end reporters by almost 3,400, while reducing the market coverage by only about 6 percent. Other thresholds may have more imbalanced effects on either reporting burden or market coverage. For example, at a threshold of 25 open-end lines of credit, the projected market coverage by reporting institutions will only increase by 5 percent compared to the coverage level at a threshold of 100 open-end lines of credit, but almost 1,000 additional institutions would be burdened by reporting requirements. On the other hand, while a threshold of 1,000 open-end lines of credit would substantially reduce the number of reporting institutions, it would only cover about two-thirds of the total market. It is also worth noting that, at a threshold of 100 open-end lines of credit, almost all open-end reporters will also report closed-end mortgage loans.[491] The Bureau believes that sharing of reporting and compliance resources within the same financial institution for both closed-end and open-end reporting will help reduce reporting costs.

The Bureau also considered exempting certain small financial institutions, such as those defined as ''small entities'' as described in part VIII, below, from the reporting requirements of the final rule. As described above, however, excluding small financial institutions would undermine both the utility of HMDA data for analysis at the local level and the benefits that HMDA provides to communities. Thus, removing these institutions would deprive users of important data about communities and vulnerable consumers.

Finally, the Bureau considered a tiered reporting regime under which smaller financial institutions would be exempt from reporting some or all of the data points not identified by the Dodd-Frank Act. Tiered reporting would preserve some information about availability of credit in particular communities and to vulnerable consumers while relieving some burden. Tiered reporting presents a number of problems, however. First, because under a tiered reporting regime smaller financial institutions would not report all or some of the HMDA data points, tiered reporting would prevent communities and users of HMDA data from learning important information about the lending and underwriting practices of smaller financial institutions, which may differ from those of larger institutions. Second, as discussed above, the primary driver of HMDA costs is establishing and maintaining systems to collect and report data, not the costs associated with collecting and reporting a particular data field. Therefore, tiered reporting would reduce the costs of low-volume depository institutions somewhat, but not significantly.

4. The Scope of the Transactional Coverage of the Final Rule

The final rule requires financial institutions generally to report all dwelling-secured, consumer-purpose closed-end loans and open-end lines of credit, as well as commercial-purpose loans and lines of credit made for home purchase, home improvement, or refinancing purposes.[492] The final rule eliminates home improvement loans not secured by a dwelling from the reporting requirements, while consumer-purpose closed-end mortgage loans, open-end lines of credit, and reverse mortgages will now be reported regardless of whether they were for home purchase, home improvement, or refinancing. Commercial-purpose closed-end loans will continue to be reported only if the purpose is for home purchase, home improvement, or refinancing. Commercial-purpose open-end lines of credit with home purchase, home improvement, or refinancing purposes must now be reported. Finally, for preapproval requests that are approved but not accepted, reporting will change from optional to mandatory.

Benefits to consumers. The revisions to Regulation C's transactional coverage will benefit consumers by providing a more complete picture of the dwelling-secured lending market. The additional transactions required to be reported will improve market monitoring, and will potentially aid in identifying and tempering future financial crises. Using open-end lines of credit and closed-end home-equity loans as an example, in the lead up to the financial crisis between 2000 and 2008, the balance of home-equity lending increased by approximately 16.8 percent annually, moving from $275.5 billion to $953.5 billion in total.[493] Various researchers have pointed out that rapidly expanding lending activities in home-equity lines of credit and home-equity loans contributed to the housing bubble as borrowers and lenders both vigorously took on high leverage. Additional research has shown that the growth in home-equity lending was correlated with subsequent home price depreciation, as well as high default and foreclosure rates among first mortgages.[494] Researchers have argued that these correlations were driven in part by consumers using open-end lines of credit to fund investment properties, which impacted default rates when housing prices began to fall. Researchers have also shown evidence that distressed homeowners with closed-end subordinate-lien mortgage loans encountered several challenges when seeking assistance from public and private mortgage relief programs.[495] Data on these loans might have helped public officials improve the effectiveness of these relief programs. However, because HMDA does not currently cover all home-equity loans, and most financial institutions choose not to report home-equity lines of credit, this substantial market is almost completely missing from the HMDA data. Based on information from HUD and Moody's Analytics (May 2013), HMDA data currently include only approximately 1 percent of all open-end lines of credit and 35 percent of closed-end home-equity loan originations. Data identifying the presence and purpose of home-equity lending may enable government, industry, and the public to avert similar scenarios in the future.

Changes to transactional coverage will also improve the ability of government, researchers, and community groups to determine whether financial institutions are serving the housing needs of their communities. Home equity has long been the most important form of household savings and consumers often resort to tapping their home equity for various purposes. The optional reporting of open-end lines of credit, and limited coverage of closed-end

[491] Note that, while the Bureau estimates there will be 24 financial institutions that will report open-end lines of credit but not report closed-end mortgage loans, that number (24) is well within the margin of error and thus may be close to zero due to the uncertainty of the raw estimation.

[492] A financial institution reports data on dwelling-secured, closed-end mortgage loans only if it originated at least 25 closed-end mortgage loans in each of the two preceding calendar years and also met all the other reporting criteria. Similarly, a financial institution reports data on dwelling-secured, open-end lines of credit only if it originated at least 100 open-end lines of credit in each of the two preceding calendar years and also met all the other reporting criteria.

[493] Michael LaCour-Little et al., *The Role of Home Equity Lending in the Recent Mortgage Crisis,* 42 Real Estate Economics 153 (2014).

[494] *See* Atif Mian & Amir Sufi, *House Prices, Home Equity-Based Borrowing, and the U.S. Household Leverage Crisis,* 101 Am. Econ. Rev. 2132, 2154 (Aug. 2011); Donghoon Lee et al., Fed. Reserve Bank of New York, Staff Report No. 569, *A New Look at Second Liens,* at 11 (Aug. 2012); Michael LaCour-Little et al., *The Role of Home Equity Lending in the Recent Mortgage Crisis,* 42 Real Estate Economics 153 (2014).

[495] *See* Vicki Been et al., Furman Ctr. for Real Estate and Urban Policy, *Essay: Sticky Seconds—The Problems Second Liens Pose to the Resolution of Distressed Mortgages,* at 13–18 (Aug. 2012).

home-equity lending and reverse mortgages under the current Regulation C, provide an incomplete picture of whether financial institutions are serving the housing needs of their communities. The changes to transactional coverage will significantly close this gap.

Additionally, the changes to transactional coverage in the final rule will benefit consumers by improving fair lending analyses. Regulators, community groups, and researchers use HMDA data to identify disparities in mortgage lending based on race, ethnicity, and sex. These analyses are used for prioritization and scoping purposes to select the institutions, and parts of institutions, to review. As discussed above, a substantial amount of open-end lines of credit and closed-end home-equity loans are not reported. The extent of reverse mortgage reporting under HMDA is unknown because the existing data provide no way to distinguish reverse mortgages from other loans, but the Bureau believes that a substantial number of reverse mortgages are not reported. Because a substantial amount of these transactions are not reported, it is not possible during prioritization analyses to develop a clear assessment of the fair lending risk to consumers of these specific products. In addition, all of these products may have unique underwriting and pricing guidelines that would merit separate analyses. It is not currently possible to identify these products in HMDA, however, so most fair lending analyses that use HMDA data combine these products and other products with potentially different underwriting and pricing standards. These shortcomings reduce the reliability of risk assessment analyses, limiting the ability to identify consumers that might have been subjected to illegal discrimination.

Requiring reporting of all reverse mortgages also benefits consumers through improved fair lending analysis focused on age discrimination. Reverse mortgages are a special mortgage product designed to satisfy the later-life consumption needs of seniors by leveraging their home equity while permitting them to maintain homeownership. During its 2013 fiscal year, HUD endorsed 60,091 home-equity conversion mortgages (HECMs), which counted for almost all of the reverse mortgage market. Various stakeholders and advocates have called for better data about the reverse mortgage market based on concerns about potential abuse of vulnerable seniors. Mandatory reporting of reverse mortgages will provide public officials, community organizations, and members of the public with more information to assist consumers age 62 or older. This change is consistent with Congress's decision to include age as a new data point in the Dodd-Frank Act, which the Bureau believes signaled an intention to strengthen protections for seniors.

Mandatory reporting of preapproval requests that are approved but not accepted will also benefit consumers through improved fair lending analyses. Currently, data about preapproval requests that are approved but not accepted are optionally reported. Thus, these data are largely absent from the HMDA data that regulators and community groups analyze. Including these preapproval requests will improve fair lending analyses by providing for a more accurate comparison between those applications that satisfy a financial institution's underwriting criteria and those that are reported as either originated or approved but not accepted, and those that are reported as denials.

The changes to transactional coverage in the final rule also improve the ability of public officials to distribute public-sector investment so as to attract private investment to areas where it is needed. HMDA data provide a broadly representative picture of home lending in the nation unavailable from any other data source. Open-end lines of credit and closed-end home-equity loans are important forms of lending that are considered in evaluations under the CRA. Expanded reporting of open-end lines of credit, closed-end home-equity loans, and reverse mortgages will improve HMDA's coverage of mortgage markets, which in turn will enhance the HMDA data's usefulness in identifying areas in need of public and private investment and thereby benefit consumers.

Finally, expanded reporting of home-equity lending will reduce the chance of regulatory gaming by financial institutions. To the extent that open-end lines of credit and closed-end home-equity loans are largely interchangeable for customers applying for credit for a given purpose, lenders could, under current Regulation C reporting requirements, intentionally recommend consumer-purpose open-end lines of credit as substitutes for closed-end home-equity loans to avoid reporting of home-equity loans. Expanded reporting of both closed-end home-equity loans and open-end lines of credit will mitigate such misaligned incentives and ultimately benefit consumers by closing the data reporting gap.

Costs to consumers. The final rule eliminates reporting of home improvement loans not secured by a dwelling (*i.e.,* whether unsecured or secured by non-dwelling collateral), which reduces the data available to analysts. This, in turn, imposes a cost on consumers. The Bureau estimates that financial institutions reported approximately 340,000 non-dwelling-secured home-improvement loans under HMDA during 2013. This comprised 2.4 percent of the total record volume. Under the final rule, regulators, community groups, and researchers will not be able to use HMDA data to assess fair lending risks for this product, which will reduce the likelihood of identifying consumers who are potentially disadvantaged when taking out non-dwelling-secured home improvement loans. In addition, it is possible that the general loss of data may negatively affect research in other unexpected ways and thus negatively impact consumers. However, commenters did not state that they or others have used HMDA data about non-dwelling-secured home-improvement loans to further HMDA's purposes, and the Bureau does not believe HMDA data on such loans is widely used for those purposes.

The increased transactional coverage will not impose any direct costs on consumers. However, consumers may bear some indirect costs of increased transactional coverage if financial institutions pass on some or all of the costs imposed on them by reporting additional transactions. Following microeconomic principles, the Bureau believes that financial institutions will absorb one-time costs and increased fixed costs but will pass on increased variable costs to future mortgage applicants. The Bureau estimates that the final rule's changes to transactional coverage regarding open-end lines of credit will increase variable costs per open-end line of credit application by approximately $41.50 for a representative tier 3 open-end reporter, $6.20 for a representative tier 2 open-end reporter, and $3 for a representative tier 1 open-end reporter.[496] Thus, the Bureau expects that a representative tier 3 financial institution covered by the final rule will pass on to borrowers of open-end lines of credit $41.50 per

[496] These cost estimates incorporate all the required data fields in the final rule and the operational improvements the Bureau is developing. This differs from cost impacts regarding data points presented in part VII.F.5, which normally isolate one change by, for example, not counting operational improvements. This is because the Bureau assumes that the overwhelming majority of open-end-line-of-credit reporting will be new and hence the baseline cost would be zero and the number of data fields as well as operational details in the baseline scenarios for open-end reporting would be inapplicable.

application; a representative tier 2 financial institution will pass on $6.20 per open-end application; and a representative tier 1 financial institution will pass on $3 per open-end application. This expense will be amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate a material adverse effect on credit access in the long or short term if financial institutions pass on to consumers the costs of reporting open-end lines of credit under the transactional coverage adopted in the final rule.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the proposed rule, but that this would be difficult in the current market where profit margins for mortgages are tight, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products offered, leave geographic or product markets, or spend less time on customer service. Similarly, several industry commenters stated that the rule would increase costs to consumers or force small financial institutions to consider merging, raising prices, originating fewer loans, or exiting the market. As discussed above, the Bureau believes that any costs passed on to consumers will be amortized over the life of a loan and represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if financial institutions pass on these costs to consumers.

Benefits to covered persons. The final rule eliminates reporting of non-dwelling-secured home improvement loans, which will reduce costs to covered persons. Using HMDA data, as well as information from interviews of financial institutions, the Bureau estimates that each year, on average, tier 3, tier 2, and tier 1 financial institutions receive approximately 1, 20, and 900 applications for non-dwelling-secured home improvement loans, respectively. Excluding those average numbers of non-dwelling-secured home improvement loans from reporting will reduce annual operational costs by approximately $43 for a representative tier 3 financial institution, $128 for a representative tier 2 financial institution, and $2,740 for a representative tier 1 financial institution.[497] This translates into a market-level savings of approximately $1,090,000 to $1,150,000 per year. Using a 7 percent discount rate, the net present value of this impact over five years will be a reduction in cost of approximately $4,500,000 to $4,700,000.

The final rule's expanded transactional coverage will improve the prioritization process used to identify institutions at higher risk of fair lending violations. This will reduce the false positives that occur when inadequate information causes lenders with low fair lending risk to be initially misidentified as high risk. Additional information on these products will explain some of these false positives, so that examination resources are used more efficiently and that lenders with low fair lending risk receive a reduced level of regulatory scrutiny.

One-time costs to covered persons. The Bureau believes that the greatest one-time cost to covered persons from the final rule's changes to transactional coverage will come from the requirement to report open-end lines of credit. Based on outreach efforts and comments received, the Bureau believes that many financial institutions process applications for open-end lines of credit on separate data platforms and data systems in different business units than home-purchase and refinance mortgages. Financial institutions not currently reporting open-end lines of credit will incur one-time costs to develop reporting capabilities for these business lines and products. Financial institutions, whether they use vendors for HMDA compliance or develop software internally, will incur one-time costs to prepare, develop, implement, integrate, troubleshoot, and test new systems for open-end reporting. Management, operations, legal, and compliance personnel in these business lines will likely require time to learn the new reporting requirements and to assess legal and compliance risks. Financial institutions will need to update training materials to reflect new requirements and may incur certain one-time costs for providing initial training to current employees. The Bureau is aware that these activities will take time and that the costs may be sensitive to the time available for them. The Bureau also believes that financial institutions that will report both open-end lines of credit and closed-end mortgage loans, which comprise the overwhelming majority of open-end reporters, could share one-time costs related to open-end and closed-end reporting. The degree of such cost sharing likely will vary based on operational complexities.

The Bureau expects these one-time costs to be smaller for financial institutions that are less complex and less likely to have separate business lines with separate data platforms and data systems for open-end lines of credit. These entities use less complex reporting processes, so more tasks are manual rather than automated, and new requirements may involve greater use of established processes. As a result, compliance will likely require straightforward changes in systems and workplace practices and therefore impose relatively low one-time costs. In estimating the impact of the transactional coverage changes for representative tier 3 open-end reporters that will also report closed-end mortgage loans, the Bureau assumes that the one-time cost of open-end reporting is minimal and already absorbed into the one-time cost of closed-end reporting because most of these straightforward changes would have occurred anyway due to the modified closed-end reporting requirements. For representative tier 3 open-end reporters that will not report closed-end mortgage loans, because the one-time cost from open-end reporting cannot be absorbed into the one-time costs of closed-end reporting, the Bureau believes that such costs can be proxied by the overall estimate of the one-time costs that the tier 3 closed-end reporters will incur, absent expanded reporting of open-end lines of credit. Thus, the Bureau estimates that the changes to transactional coverage in the final rule will impose average one-time costs of $3,000 for tier 3 open-end reporters.

For more complex financial institutions that meet the open-end reporting threshold, the Bureau expects the one-time costs imposed by the change in transactional coverage in the final rule to be relatively large. To estimate these one-time costs, the Bureau views the business lines responsible for open-end lines of credit in moderate-to-high complexity institutions as a second business line that has to modify its reporting infrastructure in response to the final rule. Industry stated this view of additional costs in comments on the proposed rule. However, very few financial institutions or trade associations provided the Bureau with specific estimates of the one-time cost associated with this change. In outreach conducted before the proposed rule, some industry participants generally stated that the one-time cost of reporting open-end lines of credit could be twice

[497] These estimates do not include potential cost savings from operational improvements.

as much as the one-time cost of adapting to other parts of the final rule, but did not provide any further detail. One commenter stated that the Bureau's estimated one-time implementation costs for moderate-complexity financial institutions were potentially correct. The Bureau estimates that, excluding open-end-line-of-credit reporting, the final rule will impose average one-time costs of $250,000 for tier 2 financial institutions and $800,000 for tier 1 financial institutions. The Bureau assumes that for tier 1 and tier 2 open-end reporters that will also report closed-end mortgage loans, which form the majority of the projected open-end reporting tier 1 and tier 2 institutions, the one-time cost of integrating open-end lines of credit into HMDA reporting processes will be roughly equal to 50 percent of the one-time costs absent expanded reporting of such products. This estimate accounts for the fact that some new systems may have to be built to facilitate reporting for these lines of business but that some fixed, one-time costs could be shared with lines of business currently subject to Regulation C, because both have to undergo systemic changes. Using these general estimates for open-end reporting tier 1 and tier 2 institutions that will also report closed-end mortgage loans, therefore, the Bureau estimates one-time costs of $125,000 and $400,000 for business lines responsible for open-end lines of credit.

On the other hand, for representative tier 2 open-end reporters that will not report closed-end mortgage loans, because such cost sharing between open-end and closed-end reporting is not possible, the Bureau proxies for the one-time costs associated with open-end reporting by using the overall estimate of the one-time costs that the tier 2 closed-end reporter will incur in response to the final rule absent expanded reporting of open-end lines of credit. Thus, the Bureau estimates that the changes to transactional coverage in the final rule will impose average one-time costs of $250,000 for tier 2 open-end reporters that will not report closed-end mortgage loans under the final rule. The Bureau does not project any tier 1 financial institutions that will report open-end lines of credit but not closed-end mortgage loans under the final rule.

Under the final rule, the open-end reporting threshold is set separately from the closed-end reporting threshold. A financial institution can report open-end lines of credit only, closed-end mortgage loans only, or both. For open-end reporters, the Bureau estimates that 749 financial institutions will meet the threshold for reporting data on open-end lines of credit, including 24 that will report open-end lines of credit only but not closed-end mortgage loans and 725 that will report open-end and closed-end simultaneously. Coupled with the fact that lenders often process open-end lines of credit in business lines separate from closed-end mortgage loans, for the purpose of transactional and institutional coverage analyses, the Bureau has adopted an approach that treats these open-end reporters as if they were separate entities distinct from their closed-end mortgage units.[498]

As with closed-end mortgage loan reporting, the Bureau realizes that costs for open-end reporting vary by institutions due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully represent. Nevertheless, the Bureau believes that the HMDA reporting process and ongoing operational cost structure for open-end reporters will be fundamentally similar to closed-end reporting. To conduct a cost consideration that is both practical and meaningful for open-end reporting, the Bureau therefore adopts the same three-tier approach and most of the key assumptions used for closed-end reporting, with two modifications. First, for representative low-complexity open-end reporters, the Bureau assumed that the number of open-end line of credit applications would be 150. This was set to both accommodate the open-end reporting threshold of 100 open-end lines of credit and to reflect a reasonable distribution among the smallest open-end reporters, based on the Bureau's estimated number of likely open-end reporters and their volumes. Second, for representative high-complexity open-end reporters, the Bureau assumed that the number of open-end line of credit applications would be 30,000. This reflects a reasonable distribution among the largest open-end lines of credit based on the Bureau's estimated number of likely open-end reporters and their volumes. The Bureau assumed that the number of open-end line of credit applications for the representative moderate-complexity open-end reporter would still be 1,000, just as for the moderate-complexity closed-end reporter.

For open-end reporters, the Bureau has adopted 2 cutoffs based on the estimated open-end line of credit volume. Specifically, the Bureau assumes the lenders that originate fewer than 200 but more than 100 open-end lines of credit are tier 3 (low-complexity) open-end reporters; lenders that originate between 200 and 7,000 open-lines of credit are tier 2 (moderate-complexity) open-end reporters; and lenders that originate more than 7,000 open-end lines of credit are tier 1 (high-complexity) open-end reporters. These cutoffs were chosen to match the overall market size in terms of the estimated number of open-end reporters (724) and the estimated number of records (approximately 900,000). Under such assumptions, the Bureau assigns 13 of the possible open-end reporters to tier 1, 463 to tier 2, and 273 to tier 3. Roughly 2 percent of these institutions are in tier 1, 62 percent are in tier 2, and 36 percent are in tier 3. This is close to the high-end distribution of closed-end reporters in which 3 percent are in tier 1, 71 percent are in tier 2, and 26 percent are in tier 3. Dividing open-end-only reporters from open-end reporters that will also report closed-end mortgage loans, the Bureau estimates that among 24 likely reporters that will report only open-end lines of credit, there are 12 tier 2 open-end reporters, 12 tier 3 open-end reporters, and no tier 1 open-end reporters; among 725 likely reporters that will report both open-end lines of credit and closed-end mortgage loans, there are 13 tier 1 open-end reporters, 451 tier 2 open-end reporters, and 261 tier 3 open-end reporters.

The baseline cost assumptions and cost estimates presented above reflect the current world in which most open-end lines of credit are not reported under HMDA. In the final rule, reporting open-end lines of credit becomes mandatory for those institutions that meet all the other criteria for a ''financial institution'' in final § 1003.2(g) and originate at least 100 open-end lines of credit. The Bureau estimated that currently only about 1 percent of total open-end lines of credit secured by dwellings were reported under HMDA. Hence the Bureau has assumed that the baseline cost for open-end-line-of-credit reporting in the current rule is zero.

By using the one-time cost estimates due to open-end reporting for representative open-end reporters that are in different tiers and that either report only open-end lines of credit or both open-end lines of credit and closed-end mortgage loans, multiplied by the number of open-end reporters of each corresponding type, the Bureau estimates that the total one-time cost due to open-end reporting for open-end reporters that will report both open-end

[498] The Bureau estimates that under the final rule almost all open-end reporters would have some business activity in closed-mortgage arena, even if a handful of them will not be reporting closed-end mortgage loans under the final rule due to their low closed-end mortgage origination volume (below 25 but greater than zero).

lines of credit and closed-end mortgage loans is approximately $61,600,000 (that is: Tier 1 $400,000 * 13 + Tier 2 $125,000 * 451 + Tier 3 $0 * 261); the total one-time cost due to open-end reporting for open-end reporters that will report only open-end lines of credit is approximately $3,000,000 (that is: Tier 1 $400,000 * 0 + Tier 2 $250,000 * 12 + Tier 3 $3,000 * 12). Combined, the one-time costs due to open-end reporting for all open-end reporters are estimated to be approximately $64,600,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost due to changes in transactional coverage is approximately $15,800,000 per year. As a frame of reference for these market-level, one-time cost estimates due to open-end reporting, the total non-interest expenses of current HMDA reporters were approximately $420 billion in 2012. The one-time cost estimate of $64,600,000 is about 0.15 percent of the total annual non-interest expenses.[499] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years.

For mandatory reporting of preapproval requests that are approved but not accepted, the Bureau believes that the primary impact will be on ongoing operational costs rather than on one-time costs. Financial institutions are currently required to report whether a preapproval was requested for home purchase loans, and whether the preapproval was approved (if accepted) or denied, so the infrastructure to report preapproval information is already in place. Expanding mandatory reporting to all outcomes of the preapproval process therefore primarily impacts the ongoing, operational tasks required to gather information and data on additional reportable transactions.

Ongoing costs to covered persons. The changes to transactional coverage in the final rule will require financial institutions that meet the open-end threshold and other criteria to report open-end lines of credit, thereby increasing the ongoing operational costs of those financial institutions for HMDA reporting. As stated above, for the purpose of transactional coverage analyses, the Bureau treats these open-end reporters as if they were separate entities distinct from their closed-end mortgage units. The Bureau assumes that the operational costs of open-end reporting vary across 3 different open-end reporting complexity tiers, but whether an open-end reporter also reports closed-end mortgage loans does not affect its operational costs on the open-end side. The Bureau estimates that for a representative tier 1 open-end reporter with 30,000 open-end loan/application register records, the ongoing operational cost of open-end reporting is about $273,000 per year, or approximately $9 per record per year. For a representative tier 2 open-end reporter with 1,000 open-end loan/application register records, the ongoing operational cost of open-end reporting is about $43,400 per year, or approximately $43 per record per year. For a representative tier 3 open-end reporter with 150 open-end loan/application register records, the ongoing operational cost of open-end reporting is about $8,600 per year, or approximately $57 per record per year. Based on information from HUD and Moody's Analytics (May 2013), HMDA data currently include only approximately 1 percent of all open-end lines of credit. Therefore, the Bureau assumes that the ongoing operational cost associated with open-end reporting is practically zero. Therefore, the estimated ongoing operational costs for open-end reporting under the final rule represent the entire impact on operational costs due to the open-end transactional coverage change. These cost estimates incorporate all the required data fields in the final rule and the Bureau's operational improvements.

Based on the estimate that 13 open-end reporters are in tier 1, 463 are in tier 2, and 273 are in tier 3, the Bureau estimates that the total impact on ongoing operational costs due to open-end reporting is approximately $26,000,000 per year ($273,000 * 13 + $43,400 * 463 + $8,600 * 273). Using a 7 percent discount rate, the net present value of this cost over five years is approximately $106,600,000.

The final rule also modifies transactional coverage by requiring reporting of closed-end home-equity loans, reverse mortgages, and preapproval requests that have been approved but not accepted. To estimate the impact on ongoing operational costs due to these changes, the Bureau allocates these transactions among the three representative closed-end lenders proportionately to the lender's loan/application register size. The Bureau estimated that, on average, tier 3 financial institutions with 50 records receive approximately one application for closed-end home-equity loans; no applications for reverse mortgages; and no preapproval requests that were approved but not accepted. The Bureau estimated that, on average, tier 2 financial institutions with 1,000 records receive an estimated 15 applications for closed-end home-equity loans; no applications for reverse mortgages; and five preapproval requests that were approved but not accepted. And the Bureau estimated that, on average, tier 1 financial institutions with 50,000 records receive an estimated 700 applications for closed-end home-equity loans; five applications for reverse mortgages; and 245 preapproval requests that were approved but not accepted.

Reporting data for these additional loans will increase operational costs by approximately $43, $128, and $2,890 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively, without accounting for operational improvements. Using the two tier distributions discussed previously, this translates into a market-level cost of approximately $1,130,000 to $1,180,000 per year. Using a 7 percent discount rate, the net present value of this cost over five years is approximately $4,600,000 to $4,800,000. Considering operational improvements, operational costs will increase by approximately $42, $125, and $2,880 per year, for the representative entities in tier 3, tier 2, and tier 1, respectively. This translates into a market-level cost of approximately $1,120,000 to $1,160,000 per year. Using a 7 percent discount rate, the net present value of this cost over five years is approximately $4,600,000 to $4,800,000.

Alternatives considered. The Bureau considered excluding preapprovals from reporting requirements. Based on a review of historical HMDA data, the Bureau estimates that on average tier 3 financial institutions receive one request for a preapproval per year, tier 2 financial institutions receive 15 requests per year, and tier 1 financial institutions receive 700 requests per year. The estimated reduction in the operational cost of reporting data for these preapprovals is approximately $43, $96, and $2,100 per year, for representative tier 3, tier 2, and tier 1 financial institutions, respectively, without accounting for savings from operational improvements. This translates into a market-level impact of approximately $880,000 to $890,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is approximately $3,600,000 to $3,700,000.

Including the operational improvements reduces the estimated operational costs of reporting data for preapprovals by approximately $41, $94, and $2,100 per year for

[499] The Bureau estimated the total non-interest expense for banks, thrifts and credit unions that reported to HMDA based on Call Report data for depository institutions and credit unions, and NMLSR data for nondepository institutions, all matched with 2012 HMDA reporters.

representative tier 3, tier 2, and tier 1 financial institutions, respectively. This translates into a market-level savings of approximately $870,000 to $880,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $3,560,000 to $3,610,000.

5. The Data That Financial Institutions are Required to Report About Each Loan or Application

For each application, originated loan, or purchased loan submitted as part of a financial institution's loan/application register, Regulation C currently requires reporting of 35 separate pieces of information, and allows for optional reporting of three denial reasons.[500] Throughout this part VII.F.5, the Bureau uses the term ''data point'' to refer to each piece of information to be reported and ''data field'' to refer to the actual entries on the loan/application register necessary to report the required data points. For example, currently race is one data point with ten data fields (five for primary applicant race and five for co-applicant race). The Dodd-Frank Act amended HMDA by enhancing two existing data points (rate spread and application ID) and identifying 11 new data points.[501] As part of this rulemaking, the Bureau comprehensively reviewed all current data points in Regulation C, carefully examined each data point specifically mentioned in the Dodd-Frank Act, and considered proposals to collect other appropriate data points to fill gaps where additional information could be useful to better understand the HMDA data.[502]

The revisions include improvements and technical revisions to current Regulation C data requirements; the implementation as required or appropriate of the categories of information specifically identified in the Dodd-Frank Act; and the addition of other data points that fill existing informational gaps and will further the purposes of HMDA. One important consideration during the Bureau's rulemaking process that informs this discussion of benefits, costs, and impacts was alignment of data fields to existing regulations or industry data standards. In order to develop this alignment, the Bureau analyzed each data point currently included in Regulation C, each new data point identified in the Dodd- Frank Act, and each additional data point the Bureau considered during the rulemaking process, to determine whether analogous data existed in the Uniform Loan Delivery Dataset (ULDD) (first preference) or the larger Mortgage Industry Standards Maintenance Organization (MISMO) data dictionary (second preference). In each instance, before the Bureau considered aligning to one of these external data standards, the MISMO/ULDD definition needed to be adequate to meet the objectives of HMDA and Regulation C. In some instances, even when analogous data existed in ULDD or MISMO, the Bureau decided to adopt data point definitions different than ULDD or MISMO when other considerations outweighed the benefit of alignment. For data points that could not be aligned with MISMO/ULDD, the Bureau aligned these data points with definitions provided by other regulations if appropriate, or used completely new definitions.

Current HMDA data points. Currently, financial institutions are required to collect and report information for 35 data fields, and have the option of reporting three additional fields conveying denial reasons. Considering only the current 35 mandatory fields, the final rule will increase the number of required fields by 12. Reporting of denial reasons is changing from optional to mandatory and reporters will have the option of reporting four denial reasons instead of three. This change will add four required data fields. A fifth additional data field captures number of total units, which along with construction method is replacing property type, as the current ''property type'' data field will be replaced by two fields (number of units and construction method), both of which are in MISMO and ULDD. Disaggregation of ethnicity increases the total number of ethnicity data fields that are reportable by eight, from two to ten. Currently, applicants and co-applicants each choose either Hispanic/Latino or not Hispanic/Latino. Going forward, applicants and co-applicants will continue to have the option of choosing Hispanic/Latino or not Hispanic/Latino, but will also have the option of choosing Mexican, Puerto Rican, Cuban, or Other Hispanic/Latino. Applicants will not be limited on the number of ethnic groups they can choose, and HMDA reporters must report all ethnicities applicants report. Therefore, both the primary applicant and co-applicant can choose up to five ethnicities, for a total of ten data fields, or a net increase of eight data fields. On the other hand, disaggregation of race will not increase the total number of race data fields, because the final rule limits the total number of race fields that can be reported for each applicant/co-applicant to five, the same as the current level. Specifically, currently applicants and co-applicants can each choose up to five racial groups (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White). Going forward, the list that applicants and co-applicants can choose from will be expanded to include Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian, Native Hawaiian, Guamanian or Chamorro, Samoan, or Other Pacific Islander. Finally, financial institutions will no longer have to report MSA/MD, because these data can be easily obtained from information already provided about the relevant State and county. Adding 13 data fields and losing one yields a net increase of 12 data fields.

In addition to adding 12 data fields, the final rule will also change the information reported for 19 current HMDA data fields. These revisions address changes required by the Dodd-Frank Act, align current HMDA fields with industry data standards, and close information gaps. Specifically, to address changes required by the Dodd-Frank Act, the financial institution's identifier will be replaced by a Legal Entity Identifier, application ID will be replaced by a unique, robust ID number, and rate spread will be required for most covered loans subject to Regulation Z. Occupancy will be revised to convey principal residence, second residence, or investment property, and property type will be replaced by number of total units and construction method. Finally, to close information gaps, loan amount will be reported in dollars instead of thousands of dollars; additional ''other'' and ''cash-out refinance'' categories will be added to loan purpose; and the current ethnicity

[500] The 35 pieces of information are respondent ID, agency code, application number, application date, loan type, property type, purpose, occupancy, loan amount, preapprovals, action, action date, MSA, State, county, census tract, applicant ethnicity, applicant sex, five applicant race data fields, co-applicant ethnicity, co-applicant sex, five co-applicant race data fields, income, purchaser, rate spread, HOEPA status, and lien status.

[501] These 11 data points consist of total points and fees, prepayment penalty term, introductory interest rate term, non-amortizing features, loan term, application channel, loan originator ID, property value, parcel number, age, and credit score.

[502] A financial institution's loan/application register is also accompanied by a transmittal sheet that contains data about the submission, such as the number of entries, the address of the financial institution, and the appropriate Federal agency. The final rule does not change these requirements, except that financial institutions that report data quarterly will identify the relevant quarter and year, and the reporter's identification number is being replaced by the Legal Entity Identifier, discussed below.

and race fields will contain more granular ethnicity and racial categories.

Current HMDA data points—benefits to consumers. The Bureau believes that the revisions to the current HMDA data fields, which increase the amount of information included in HMDA, will improve current processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. The following discussion provides several examples of how the revised existing data fields will ultimately benefit consumers by facilitating enhanced fair lending analyses. The section-by-section analyses in part V, above, provide more detailed exposition on each of the enhanced data points.

As one example, the reason for denial is an important data point used to understand underwriting decisions and focus fair lending reviews. Currently, Regulation C permits optional reporting of the reasons for denial of a loan application. Mandatory reporting of this information, combined with enhanced or additional data points commonly used to make underwriting decisions, will provide more consistent and meaningful data. These improved data can improve the ability to identify both discriminatory lending patterns in underwriting decisions and consumers who have been unfairly disadvantaged. In addition, denial reasons, combined with careful analysis of key underwriting data fields, could help reduce the false positive rate of fair lending prioritization analyses, leading to better targeting of fair lending reviews. This will further improve the likelihood of identifying customers who were truly unfairly disadvantaged and merit restitution.

Additionally, rate spread is currently the only quantitative pricing measure in HMDA, and is only available for originated loans meeting or exceeding the higher-priced mortgage loan thresholds for first- and subordinate-lien loans. Expanding reporting of rate spread to all covered loans subject to Regulation Z, except assumptions, purchased loans and reverse mortgage transactions, greatly enhances HMDA's usefulness for analyzing fair lending risk in pricing decisions. This change will also reduce the false positive rate observed during fair lending prioritization analyses so that the resources of regulators and financial institutions are used more efficiently. Together with additional pricing measures included in the final rule, this information will also greatly enhance the understanding of the costs of credit that consumers face.

The disaggregated racial and ethnic categories will provide meaningful data for advancing HMDA's purposes. In particular, a significant benefit of disaggregated HMDA data is that it could allow non-regulators, such as researchers and community groups, the opportunity to augment the fair lending work that regulatory agencies conduct. These groups could focus on areas and risks that regulatory agencies may not choose to examine.

The revisions to the occupancy and property type data fields provide a fourth example of benefit for fair lending analyses. The final rule revises data regarding occupancy status by requiring separate itemization of second residences and investment properties, and revises data regarding property type by replacing this field with construction method and the number of units. These revisions will allow more accurate accounting of the differences in underwriting and pricing policies that financial institutions apply. This will improve analyses of outcomes and hence reduce false positive rates in current fair lending prioritization processes used by regulatory agencies. Improved prioritization will further improve the likelihood of identifying customers who were truly unfairly disadvantaged and merit restitution.

The Bureau also believes that the revisions to the current HMDA data fields, which increase the amount of information included in the HMDA dataset, will improve the ability to assess whether financial institutions are meeting the housing needs of their communities and assist public officials in making decisions about public-sector investments. The denial reason data fields will provide greater understanding of why credit is denied to specific applicants, the expanded rate spread data point will provide additional information about the affordability of the credit offered, and the revised occupancy and property type data fields will provide additional insight into more detailed property and product markets. Additionally, the revisions to the occupancy status data field will provide finer gradients by separately identifying second homes and investment properties, which will help identify trends involving potentially speculative purchases of housing units similar to those that contributed to the recent financial crisis. Recent research suggests that speculative purchases by investors were one driver of the recent housing bubble and subsequent financial crisis.[503] These impacts may be especially relevant for areas that are experiencing sharp increases in investor purchases. Thus, information related to second homes and investment properties may help communities and local officials develop policies tailored to the unique characteristics associated with these separate segments of the mortgage market.

Finally, revisions to the property type data field will be of particular interest in the wake of the housing crisis as families have increasingly turned to rental housing. Greater detail about multifamily housing finance may provide additional information about whether financial institutions are serving the housing needs of their communities.

Current HMDA data points—costs to consumers. The revisions to the current HMDA data fields will not impose any direct costs on consumers. However, consumers may bear some indirect costs if financial institutions pass on some or all of the costs imposed on them by the final rule. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants but will absorb one-time costs and increased fixed costs if markets are perfectly competitive and financial institutions are profit maximizers. The impact of the changes in the final rule to the 19 current HMDA data fields will affect only one-time costs and fixed costs, as financial institutions modify their infrastructure to incorporate the final data field specifications. The revision to current HMDA data fields that impacts variable cost is the net addition of 12 data fields.

To estimate the impact on variable cost of a net increase of 12 additional data fields, the Bureau treated the four denial reason data fields as new data fields, the additional property type field as a new data field that aligns with MISMO/ULDD, the 8 additional ethnicity fields as new data fields, and the MSA/MD data field as an existing data field to be dropped that aligns with MISMO/ULDD. The Bureau estimates that the impact of this component of the final rule on variable costs per application is approximately $10 for a representative tier 3 financial institution, $0.31 for a representative tier 2 financial institution, and $0.03 for a representative tier 1 financial institution.[504] This expense will be

[503] *See* Andrew Haughwout *et al.*, Fed. Reserve Bank of New York, Staff Report No. 514, *Real Estate Investors, the Leverage Cycle, and the Housing Market Crisis,* (Sept. 2011).

[504] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

amortized over the life of the loan and represents a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term if financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the final rule, but that this would be difficult in the current market where profit margins for mortgages are tight. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products offered, leave geographic or product markets, or spend less time on customer service. Many comments to the proposed rule echoed similar sentiments that the proposal would likely increase the cost of credit for consumers. Several commenters cited increased costs associated with reporting additional data fields. A few commenters noted that small financial institutions in general would be required to merge, raise prices, originate fewer loans, or exit markets. As discussed above, the Bureau believes that any costs passed on to consumers will be amortized over the life of a loan and represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if financial institutions pass on these costs to consumers.

Current HMDA data points—benefits to covered persons. One primary benefit of the revisions to the current HMDA data points in the final rule is the improved alignment between the HMDA data standards and the data standards that many financial institutions already maintain.[505] For example, the current HMDA definitions for occupancy status and property type are not directly compatible with the records of mortgage loan applications that most financial institutions store in their loan origination systems. This may have created extra burden on the financial institutions that had to use additional software to modify data in existing systems in order to record and submit HMDA data.

The Bureau believes that aligning the requirements of Regulation C to existing industry standards for collecting and transmitting data on mortgage loans and applications will reduce the burden associated with Regulation C compliance and data submission for some institutions. In addition, promoting consistent data standards for both industry and regulatory use has benefits for market efficiency, market understanding, and market oversight. The efficiencies achieved by such alignment should grow over time, as the industry moves toward common data standard platforms.

For example, many financial institutions already separately identify second residence and investment properties in their underwriting process and loan origination system (LOS). Separate enumeration of these occupancy types is also present in MISMO/ULDD. Therefore, aligning to industry standards will reduce burden for financial institutions by maintaining the same definition for HMDA reporting that financial institutions use in the ordinary course of business. Smaller, less-complex financial institutions will experience fewer potential benefits, because these institutions rely more on manual reporting processes and are more likely to originate portfolio loans where MISMO/ULDD may have not been adopted.

Among current HMDA data fields, property type and occupancy will be modified to align with MISMO/ULDD. The primary benefit of this alignment will be to reduce costs for training and researching questions. The Bureau estimates that this alignment will reduce operational costs by approximately $120, $1,100, and $10,200 per year for representative tier 3, 2, and 1 financial institutions, respectively.[506] This translates into a market-level impact of $5,700,000 to $7,900,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $23,300,000 to $32,200,000. With the inclusion of operational improvements, the estimated reduction in operational costs is approximately $120, $1,000, and $10,100 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively.[507] This translates into a market-level savings of $5,600,000 to $7,700,000 per year. The net present value of this savings over five years is $23,000,000 to $31,700,000.

Current HMDA data points—ongoing costs to covered persons. Specific to the current set of HMDA data points, the final rule increases the number of data fields by 12 on net, and alters the information provided for 19 other fields. The cost impact of these changes on covered persons will vary by data field. For example, some data fields may depend on multiple sub-components or information from multiple platforms. To capture these potential differences, the Bureau estimated different costs depending on whether a data field is aligned with ULDD, MISMO, another regulation, or is a completely new data field.

The four denial reason fields are new data fields not aligned with MISMO, ULDD or another regulation; number of units, which along with construction method replaces property type, is aligned with ULDD; the eight additional ethnicity data fields are not aligned with MISMO, ULDD or another regulation; and MSA/MD, which is being excluded, is also aligned with ULDD.[508] This net increase of 12 data fields increases the costs of transcribing data, transferring data to HMS, researching questions, checking post-submission edits, training, exam assistance, conducting annual edits/checks, and conducting external audits. The Bureau estimates that this component of the final rule will increase operational costs by approximately $460, $3,100, and $8,000 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively.[509]

Number of units will be a new data field that all financial institutions will be required to report, and MSA/MD is an existing data field that will no longer be required. Although the three current denial reasons are considered new data fields, operationally, they will only be new data fields for reporters currently choosing not to report them, or currently not being required by their regulator to report them. In the 2013 HMDA data, approximately 30 percent of HMDA reporters did not provide denial reasons, and approximately 25 percent of all denials did not have data

[505] The final rule eliminates required reporting of the MSA/MD data field. Although the exclusion of this data field creates a benefit to covered persons, it is not considered explicitly here, because on net, the revisions to current HMDA fields in the final rule add 12 data fields.

[506] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting, and do not include potential cost savings from operational improvements and additional help sources.

[507] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

[508] Although some institutions are required by their regulator to report denial reasons, Regulation C does not currently require reporting of denial reasons, so the Bureau treated these data fields as new data fields. The cost estimates discussed below are adjusted to reflect that some institutions already report these data fields.

[509] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting, and do not include potential cost savings from operational improvements and additional help sources.

regarding the reason for denial. Further analysis reveals that, compared to other HMDA reporters, HMDA reporters currently providing data regarding denial reasons had larger loan/application registers and reported almost twice as many denials. Therefore, requiring mandatory reporting of denial reasons will only impact about 30 percent of reporters, and these reporters will likely be smaller institutions. The additional denial reason and the eight additional ethnicity data fields are all new data fields all financial institutions will have to report. Taking all of this into consideration, the Bureau estimates the market-level cost of increasing the number of current HMDA data fields by 12 on net in the final rule to be between $8,900,000 and $15,200,000. Using a 7 percent discount rate, the net present value of the cost increase over five years is $36,500,000 to $62,100,000.

Considering operational improvements, the final rule will increase operational costs by approximately $400, $2,100, and $6,500 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively.[510] This translates into a market-level cost of between $6,700,000 and $10,800,000. Using a 7 percent discount rate, the net present value over five years will be a cost increase of $27,500,000 to $44,100,000.

The primary cost impact of modifying 19 existing data fields, two of which align with ULDD, will be the occurrence of one-time costs to modify current reporting policies and procedures, update software systems, and conduct training and planning. These cost impacts will generally be addressed in the discussion of one-time costs below. The one exception is the requirement that financial institutions obtain and report an LEI instead of the current reporter's ID. The Bureau estimates that the one-time cost of acquiring an LEI is approximately $200 with an ongoing cost of approximately $100 per year. This translates into an estimated market-level impact of $1,400,000 in one-time costs and an increase of $720,000 in ongoing costs per year. For one-time costs, using a 7 percent discount rate and five-year amortization window, the annualized cost is $351,000. For ongoing costs, using a 7 percent discount rate, the net present value over five years is an increase in costs of approximately $3,000,000.

[510] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

Current HMDA data points—alternatives considered. Apart from the revisions discussed above, the Bureau considered requiring a detailed enumeration of the subordinate lien category. This change to lien status was included in the proposal because the Bureau believed that more detailed enumeration would provide useful information for analysis and would reduce the reporting burden by making the definition of lien status consistent with MISMO. Following numerous commenters that pointed out that very few loans would have third or higher liens and that more granularity would actually increase rather than reduce reporting burden, the Bureau decided to maintain the definition of lien status currently in HMDA. To the extent that changes were adopted for any individual current data point, the costs and benefits of that decision are addressed in the section-by-section analysis of the relevant provision above.

New HMDA data points. The final rule requires financial institutions to report 50 additional data fields under HMDA. This number does not include unique loan ID, rate spread, number of units, or construction method, each of which replaces a data field currently reported under HMDA. The Dodd-Frank Act explicitly identified 13 additional data points. Excluding unique loan ID and rate spread, which replace data fields currently reported under HMDA, the remaining 11 Dodd-Frank Act-identified data points translate into 22 new data fields financial institutions will have to report on their loan/application registers. To fill information and data gaps, the Bureau is adopting 13 data points, which translates into an additional 28 new data fields financial institutions will have to report on their loan/application register. For these 50 additional data fields, 19 are aligned with ULDD, 12 are aligned with MISMO, and one is aligned with another regulation. The remaining 18 data fields are not in MISMO or ULDD, or aligned with another regulation.[511]

New HMDA data points—benefits to consumers. The additional data points will have several benefits to consumers. First, the additional fields will improve the usefulness of HMDA data for analyzing mortgage markets by regulators and the public. For example, data points such as non-amortizing features, term of introductory interest rate, prepayment penalty term, and the open-end line of credit indicator are related to certain high-risk lending concerns, and reporting this information will enable a better understanding of the types of products and features consumers are receiving. Recent research has indicated that each of these products and product characteristics have increased likelihoods of default and foreclosure and may have exacerbated the recent housing crisis. In addition to being better able to identify some of the risk factors that played a role in the recent financial crisis, the new HMDA data points on pricing and underwriting will improve current research efforts to understand mortgage markets. All of these enhancements will allow for improved monitoring of trends in mortgage markets and help identify and prevent problems that could potentially harm consumers and society overall.

Second, the additional data points will help improve current policy efforts designed to address various market failures. As discussed previously, the mortgage market is characterized by information asymmetry, and this inherent deficiency was made apparent during the financial crisis. In response to the recent financial crisis, the government has pursued a number of policies aimed at regulating the market and protecting consumers. The additional data points will help inform future policy-making efforts by improving consideration of the benefits and costs associated with various choices, resulting in more effective policies. As an example, many recent regulations have limited the types of risky mortgage products that lenders can make to borrowers without fully considering borrowers' ability to repay. New data fields on non-amortizing features, term of introductory interest rate, prepayment penalty term, and debt-to-income ratio can assist future assessment of the effectiveness of such regulations and facilitate adjustments when needed.

Third, the additional data points will help determine whether financial institutions are serving the housing needs of their communities and help public officials target public investment to better attract private investment. For example, the data points related to manufactured housing will reveal more information about this segment of the market. Borrowers in manufactured housing are typically more financially vulnerable than borrowers in site-built housing and may deserve closer attention from government agencies and community groups. Similarly, the data points related to multifamily dwellings

[511] Some data fields were aligned with multiple sources. For the consideration of costs and benefits, the Bureau assigned each data field to one source. The following hierarchy was used for data fields aligned to multiple sources: (1) ULDD, (2) MISMO, (3) another regulation, and (4) not aligned to another source.

will reveal more information about this segment of the market, which mostly serves low- to moderate-income renters who live in these financed units. Advocacy groups and government agencies have raised concerns over affordability issues faced by individuals living in multifamily dwellings, who also tend to be more financially vulnerable. Overall, by permitting a better and more comprehensive understanding of these markets, the final rule will improve the usefulness of HMDA data for assessing the supply and demand of credit, and financial institutions' treatment of applicants and borrowers in these communities.

Fourth, the Bureau believes that the additional data points will improve current processes used to identify possible discriminatory lending patterns and enforce antidiscrimination statutes. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination and as the base dataset during fair lending reviews. The additional data will allow for improved segmentation during these analyses, so that applications are compared to other applications for similar products. For example, underwriting and pricing policies often differ for open-end lines of credit, closed-end home-equity loans, reverse mortgages, and products with different amortization types. Currently, these products are all combined during prioritization and screening analyses. With additional data fields identifying these products, separate analyses can be conducted for each product, which will more accurately reflect outcomes for consumers. As a second example, pricing often differs across delivery channels, because pricing policies and processing differ, and because intermediaries, such as mortgage brokers, add an additional layer to the complexity of mortgage pricing. The addition of the origination channel data point will permit the separation of originations for pricing analyses, allowing for a better understanding of the drivers of pricing outcomes. Improved segmentation improves the accuracy of fair lending analyses, which improves the usefulness of HMDA to identify potentially disadvantaged consumers.

Additionally, the new HMDA data points on pricing will greatly improve the usefulness of HMDA data for assessing pricing outcomes during fair lending analyses. Currently, the rate spread data field is the only quantitative pricing measure included in the HMDA data. This data field includes rate spread data only for higher-priced mortgage loans, which currently comprise less than 5 percent of originated loans in the HMDA data. Thus, the usefulness of this data field is highly limited in today's environment, and for the foreseeable future. In addition, mortgage products and pricing structure are inherently complex. The rate spread data are based on the APR. APR alone, though a useful summary measure that is commonly recognizable to borrowers, fails to capture all of the underlying complexities that go into mortgage pricing. Adding discount points, lender credits, and interest rate will provide a much clearer understanding of the trade-offs between rates and points that are the foundation of mortgage pricing. The total loan costs, lender credits, and origination charge data fields will provide a deeper understanding of fees, which form the third component of mortgage pricing.

Furthermore, many of the new HMDA data points capture legitimate factors that financial institutions use in underwriting and pricing that are currently lacking in the HMDA data, which will help regulators and government enforcement agencies to better understand disparities in outcomes. Many, if not all, lenders consider data points such as credit score, CLTV, DTI, and AUS results when either underwriting or pricing mortgage applications. The addition of these types of data points will help users understand patterns in underwriting and pricing outcomes and thus better assess the fair lending risk presented by those outcomes.

Finally, the addition of the age data field will allow users to analyze outcomes for different age groups during fair lending analyses. Although consumers are protected against discrimination on the basis of age by ECOA and Regulation B, HMDA data currently lack a direct means of measuring the age of applicants. This limits the ability of government agencies and community groups to monitor and enforce violations of ECOA and Regulation B prohibitions against age discrimination in mortgage markets. Older individuals, in particular, are potentially at a higher risk of age discrimination, as well as unfair, deceptive, or abusive acts or practices. These data are especially important as an increased number of baby boomers enter retirement. The addition of the age data field will allow users to identify potential differential treatment of older Americans for various mortgage products. For example, reverse mortgages are designed to serve senior consumers and are priced based on age factors, providing an illustration of the importance of adding this data field to the HMDA data. Age data might also help inform housing policies designed to assist seniors in maintaining or obtaining home ownership, and building or utilizing home equity for improved social welfare.

The new HMDA data fields will reduce the false positive rates that occur when inadequate information causes regulators and enforcement agencies to initially misidentify financial institutions with low fair lending risk as having a high risk of fair lending violations. Better alignment between the degrees of regulatory scrutiny and fair lending risk will increase the likelihood of identifying any instances where consumers are being illegally disadvantaged, thereby ultimately benefitting consumers.

New HMDA data points—costs to consumers. The addition of 50 data fields will not impose any direct costs on consumers. However, consumers may bear some indirect costs if financial institutions pass on some or all of the costs imposed on them by the final rule. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants, but will absorb one-time costs and increased fixed costs if markets are perfectly competitive and financial institutions are profit maximizers. The Bureau estimates that the impact of the additional 50 data fields on variable costs per application is approximately $22 for a representative tier 3 financial institution, $0.62 for a representative tier 2 financial institution, and $0.05 for a representative tier 1 financial institution.[512] This expense will be amortized over the life of the loan and represents a small increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term if financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the final rule, but that this would be difficult in the current market where profit margins for mortgages are tight. In addition, some small entity representatives noted that they would attempt to pass on costs through higher

[512] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, and not for reporting of open-end lines of credit or quarterly reporting.

fees on other products offered, leave geographic or product markets, or spend less time on customer service. Many comments to the proposed rule echoed similar sentiments that the proposal would likely increase the cost of credit for consumers. As discussed above, the Bureau believes that any costs passed on to consumers will be amortized over the life of a loan and represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if financial institutions pass on these costs to consumers.

New HMDA data points—benefits to covered persons. The Bureau believes that the additional data points will improve current processes used to identify possible discriminatory lending patterns, which could reduce the burden of financial institutions subject to fair lending examinations or investigations. Financial regulators and enforcement agencies use HMDA data in their initial prioritization and screening processes to select institutions for examination or investigation, and as the base dataset during fair lending reviews. During prioritization analyses, the additional data points will provide information about the legitimate factors used in underwriting and pricing that are currently lacking in the HMDA data, helping government agencies better understand disparities in outcomes. They will also allow for improved segmentation, so that applications are compared to other applications for similar products. Finally, the additional data points on pricing measures will greatly enhance screening analyses of pricing decisions. All of these improvements will reduce false positives resulting from inadequate information. Examination resources will be used more efficiently, so that lenders at low risk of fair lending violations receive a reduced level of regulatory scrutiny.

New HMDA data points—one-time costs to covered persons. The new data points included in the final rule will impose one-time costs on HMDA reporters. Management, operations, legal, and compliance personnel will likely require time to learn the new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will take time and that the costs may be sensitive to the time available for them. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement the necessary modifications to those systems. In all cases, financial institutions will need to update training materials to reflect new requirements and may incur certain one-time costs for providing initial training to current employees. The Bureau expects these one-time costs to be relatively small for less complex financial institutions. These entities use less complex reporting processes, so the tasks involved are more manual than automated and new requirements may involve greater use of established processes. As a result, compliance will likely require straightforward changes in systems and workplace practices and therefore impose relatively low one-time costs.

The Bureau estimates the additional reporting requirements will impose on average estimated one-time costs of $3,000 for tier 3 financial institutions, $250,000 for tier 2 financial institutions, and $800,000 for tier 1 financial institutions without considering the expansion of transactional coverage to include expanded reporting of open-end lines of credit, closed-end home-equity loans, and reverse mortgages.[513] Including the estimated one-time costs to modify processes and systems for these expanded reporting requirements, the Bureau estimates that the total one-time costs will be $3,000 for tier 3 institutions, $375,000 for tier 2 institutions, and $1,200,000 for tier 1 institutions. In total, this yields an overall market impact between $725,900,000 and $1,339,100,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is $177,000,000 to $326,600,000. As a frame of reference for these market-level, one-time cost estimates, the total non-interest expenses of current HMDA reporters were approximately $420 billion in 2012. The upper bound estimate of $1,339,100,000 is approximately 0.3 percent of the total annual non-interest expenses.[514] Because these costs are one-time investments, financial institutions are expected to amortize these costs over a period of years.

New HMDA data points—ongoing costs to covered persons. The final rule requires financial institutions to report 50 additional data fields. Adding these additional data fields increases the cost of many operational steps required to report data, including transcribing data, transferring data to HMS, conducting annual edits/checks, and conducting external audits. The Bureau estimates that the impact of the additional 50 data fields on annual operational costs is approximately $2,400 for a representative tier 3 financial institution, $15,800 for a representative tier 2 financial institution, and $38,600 for a representative tier 1 financial institution.[515] This translates into a market-level cost of $54,600,000 to $92,900,000 per year. Using a 7 percent discount rate, the net present value of this cost over five years is $224,000,000 to $381,000,000. Considering operational improvements, the estimated increase in the operational cost of reporting these 50 additional data fields is approximately $2,100, $10,900, and $31,000 per year for representative tier 3, tier 2, and tier 1 financial institutions, respectively. This translates into a market-level cost of $41,000,000 to $66,100,000 per year. The net present value of this impact over five years will be a cost increase of $168,100,000 to $271,100,000.

New HMDA data points—alternatives considered. To the extent that changes were adopted for any individual data point not identified by the Dodd-Frank Act, the costs and benefits of that decision are addressed in the section-by-section analysis of the relevant provision above. Assessing the regulation as a whole, however, the Bureau considered removing some or all of the discretionary data points. As explained in greater detail in the section-by-section analysis above, the Bureau believes that the final rule balances the benefits of improved data with the burden of reporting. Removing the discretionary data points would deprive communities, researchers, and public officials of important data beneficial to identifying potentially unlawful discriminatory lending patterns, targeting public investment, and determining whether financial institutions are serving the housing needs of their communities. For example, information regarding origination charges, discount points,

[513] The Bureau realizes that the impact of one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions, and low for others.

[514] The Bureau estimated the total non-interest expense for banks, thrifts and credit unions that reported to HMDA based on Call Report and NCUA Call Report data for depository institutions and credit unions, and NMLS data for nondepository institutions, all matched with 2012 HMDA reporters.

[515] These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

interest rate, and lender credits will provide a much clearer understanding of the trade-offs between fees, rates, and points that are the foundation of mortgage pricing and the cost of housing transactions. Eliminating the discretionary data points would also increase false positives and inefficiency in evaluating the lending activity of financial institutions. As explained above, many of the additional data points capture factors that financial institutions use in underwriting and pricing that are currently lacking in the HMDA data, such as CLTV, DTI, and AUS results. On the burden side, the primary driver of HMDA costs is establishing and maintaining systems to collect and report data, not the costs associated with collecting and reporting a particular data field. Therefore, removing discretionary data points would cause a significant loss of data that would not be justified by the relatively small reduction in burden.

6. The Modifications to Disclosure and Reporting Requirements

The final rule will make several changes to the disclosure and reporting requirements under Regulation C. The first change concerns the modified loan/application register and the disclosure statement that a financial institution must make available to the public. Regulation C currently requires that a financial institution must make its ''modified'' loan/application register available to the public after removing three fields to protect applicant and borrower privacy: The application or loan ID, the date that the application was received, and the date that action was taken. Regulation C also requires financial institutions to make available to the public their disclosure statements, which are a series of tables describing an institution's HMDA data for the previous calendar year. The final rule requires financial institutions to make their modified loan/application registers and disclosure statements available to the public by making available brief notices referring members of the public seeking these data products to the Bureau's Web site to obtain them.

Second, the Bureau is requiring that a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, excluding purchased covered loans, submit its HMDA data for the first three quarters of the calendar year on a quarterly basis in addition to submitting its HMDA data for the entire calendar year on an annual basis. Based on 2013 HMDA data, 29 financial institutions reported at least 60,000 covered loans and applications, excluding purchased covered loans, in 2013, which comprised approximately 50 percent of the market. Although this estimate does not include the expansion of reporting of open-end lines of credit, the Bureau has determined that the requirement to report these products under the final rule is unlikely to have a significant impact on the number of financial institutions that would be required to report quarterly. Errors or omissions in the data that such financial institutions report on a quarterly basis will not be considered violations of HMDA or Regulation C if the financial institution makes a good-faith effort to report all required data fully and accurately within sixty calendar days after the end of each calendar quarter and corrects or completes the data prior to submitting its annual loan/application register.

Finally, the final rule will eliminate the option for financial institutions with 25 or fewer entries to submit the loan/application register in paper format.

Benefits to consumers. The final rule eliminates the option of paper reporting for financial institutions reporting 25 or fewer records, and provides that financial institutions shall make their disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the Bureau's Web site. These provisions will have little direct benefit to most consumers because they do not significantly change the substance, collection, or release of the information required to be reported.

However, the requirement that financial institutions make their modified loan/application registers available to the public by making available a brief notice referring members of the public to the Bureau's Web site will generally benefit some consumers. This provision will increase the availability of modified loan/application registers by providing one easily accessible location where members of the public will be able to access all modified loan/application registers for all financial institutions required to report under the statute. Although this benefit is limited somewhat by the fact that the modified loan/application register is currently available for download in the agencies' release made available on the FFIEC Web site, the agencies' release is typically not available until almost six months after the modified loan/application register must be made available.

Quarterly reporting by large volume financial institutions may have a number of benefits to consumers. Currently, there is significant delay between the time that final action is taken on an application and the time information about the application or loan is reported to regulators pursuant to Regulation C. This time delay ranges from two months if the date of final action occurs during December to 14 months if the date of final action occurs during January of the reporting year. The Bureau believes that timelier data will improve the ability of the regulators to identify current trends in mortgage markets, detect early warning signs of future housing finance crises, and determine, in much closer to ''real time,'' whether financial institutions are fulfilling their obligations to serve the housing needs of communities in which they are located, whether opportunities exist for public investment to attract private investment in communities, and whether there are possible discriminatory lending patterns. Also, timelier identification of risks and troublesome trends in mortgage markets by the Bureau and the appropriate agencies will allow for more effective interventions by public officials. Finally, the Bureau intends to release aggregate quarterly data or analysis to the public more frequently than annually, which would improve the ability of members of the public to use the data in a timely manner.

Costs to consumers. The adopted changes requiring financial institutions to make their disclosure statements and modified loan/application registers available to the public by providing brief notices referring members of the public to the Bureau's Web site, to eliminate the option of paper reporting for financial institutions reporting 25 or fewer records, and to require quarterly reporting by financial institutions that reported at least 60,000 covered loans or applications, excluding purchased covered loans, in the preceding year will impose only minimal direct costs on consumers. Permitting financial institutions to make their disclosure statements and modified loan/application register data available to the public through notices that clearly convey that the disclosure statements and modified loan/application register data may be obtained on the Bureau's Web site will require consumers to obtain these disclosure statements online. Given the prevalence of internet access and the ease of using the Bureau's Web site, the Bureau believes these adopted changes will impose minimal direct costs on consumers. Any potential costs to consumers of obtaining disclosure statements and modified loan/application register data online are likely no greater than the

costs of obtaining disclosure statements and modified loan/application register data from the physical offices of financial institutions, or from a floppy disk or other electronic data storage medium that may be used with a personal computer, as contemplated by HMDA section 304(k)(1)(b).

However, consumers may bear some indirect costs of the changes in the final rule if financial institutions pass on some or all of their increased costs to consumers. Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future loan applicants but will absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive. The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, five of the 18 operational tasks are variable cost tasks: Transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions.

The Bureau believes that the four changes discussed in this section will have either no, or only a minimal, effect on these variable cost tasks. Quarterly reporting, as well as the requirements that financial institutions make their disclosure statements and modified loan/application registers available to the public by making available a brief notice referring members of the public to the Bureau's Web site, will not impact any variable-cost operational steps. Hence, these three revisions in the final rule will not lead financial institutions to pass through some of the incremental costs to consumers in a perfectly competitive market with profit-maximizing financial institutions. Eliminating the option of paper reporting for financial institutions may increase transcription costs for financial institutions that currently qualify for this option and report HMDA data in paper form. However, given the closed-end and open-end reporting thresholds, very few, if any, financial institutions would meet the threshold for paper reporting. Given these factors, the Bureau estimates that the impact of this cost is negligible.

Benefits to covered persons. The Bureau believes that eliminating the option of paper reporting and requiring quarterly reporting for certain financial institutions will provide little direct benefit to covered persons. However, the requirement that financial institutions make their modified loan/application registers available to the public by providing a brief notice referring members of the public to the Bureau's Web site will benefit covered persons. This provision reduces costs to financial institutions associated with preparing and making available to the public the modified loan/application register and eliminates a financial institution's risk of missing the deadline to make it available. It also eliminates the risks to financial institutions making errors in preparing the modified loan/application register that could result in the unintended disclosure of data.

Initial outreach efforts indicated that tier 3 financial institutions rarely receive requests for modified loan/application register data. However, some tier 3 financial institutions indicated that they nevertheless prepare the data in preparation for requests. The Bureau has represented this cost as equivalent to preparing one modified loan/application register dataset each year. The Bureau estimates that representative tier 2 and tier 1 financial institutions receive three and 15 requests for modified loan/application register data each year, respectively. Based on these estimated volumes, the Bureau estimates that this revision in the final rule will reduce ongoing operational costs by approximately $130 per year for a representative tier 3 financial institution, approximately $310 per year for a representative tier 2 financial institution, and approximately $770 per year for a representative tier 1 financial institution. This translates into a market-level reduction in cost of approximately $1,500,000 to $2,000,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $6,100,000 to $8,200,000.

Similarly, permitting a financial institution to make its disclosure statements available to the public through a notice that clearly conveys that the disclosure statement may be obtained on the Bureau's Web site will free financial institutions from having to download and print their disclosure statements in order to provide them to requesters. Initial outreach efforts indicated that tier 3 financial institutions rarely receive requests for disclosure statements. However, some tier 3 financial institutions indicated that they nevertheless download and print a disclosure statement in preparation for requests. The Bureau has represented this cost as equivalent to receiving one request for a disclosure statement each year. The Bureau estimates that on average tier 2 and tier 1 financial institutions receive three and 15 requests for disclosure statements each year, respectively. Based on these estimated volumes, the Bureau estimates that this change will reduce ongoing operational costs by approximately $15 per year for a representative tier 3 financial institution, approximately $50 per year for a representative tier 2 financial institution, and approximately $250 per year for a representative tier 1 financial institution. This translates into a market-level reduction in cost of approximately $250,000 to $333,000 per year. Using a 7 percent discount rate, the net present value of this savings over five years is $1,015,000 to $1,366,000.

One-time costs to covered persons. The Bureau believes that the provisions requiring financial institutions to make their disclosure statements and modified loan/application registers available to the public by providing brief notices referring members of the public to the Bureau's Web site will require a one-time cost to create the notice. However the Bureau believes that the one-time cost to create these notices will be negligible. Similarly, the Bureau believes that the revisions in the final rule to require quarterly reporting by large volume financial institutions, and to eliminate the option of paper reporting, will not impose any significant one-time costs on covered persons.

Ongoing costs to covered persons. The Bureau believes that the provisions requiring financial institutions to make their disclosure statements and modified loan/application registers available to the public by providing brief notices referring members of the public to the Bureau's Web site will not increase ongoing costs to covered persons. Eliminating the option of paper reporting for financial institutions reporting 25 or fewer records may increase transcription costs for financial institutions that currently maintain all HMDA data in paper form. However, as discussed above, the Bureau believes that the number of financial institutions that do this is very low, especially given changes to the institutional coverage criteria, planned improvements to the data submission process and the small size of the loan/application register at issue (25 or fewer records). Therefore, the Bureau estimates that the impact of this cost is negligible.

Quarterly reporting will increase ongoing costs to covered persons, as costs will increase for annual edits and internal checks, checking post-submission edits, filing post-submission edits, internal audits, and external audits. The Bureau estimates that this change will increase ongoing operational costs by approximately

$31,000 per year for a representative tier 1 financial institution.[516]

Based on 2013 HMDA data, 29 financial institutions reported at least 60,000 covered loan and applications, combined, excluding purchased covered loans, in 2013, which is substantially larger than the average loan/application register sizes of the representative tier 3 institutions (50 records), tier 2 institutions (1,000 records), and is also above the loan/application register size of the representative tier 1 institutions (50,000) assumed by the Bureau. Therefore, the Bureau believes that it is reasonable to regard all of these institutions as tier 1 HMDA reporters. This yields an estimated market cost of $899,000 (= 29 * $31,000). Using a 7 percent discount rate, the net present value of this impact over five years will be approximately an increase in costs of $3,700,000.

G. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

As discussed above, the final rule makes certain changes to the institutional and transactional coverage of Regulation C and modifies the disclosure and reporting requirements. The Bureau believes that the benefits of these revisions for depository institutions and credit unions with $10 billion or less in total assets will be similar to the benefits to creditors as a whole, as discussed above. The only potential difference would be the benefits of aligning current and new HMDA data points to industry standards, which will likely create higher benefits for larger institutions. Regarding costs, other than as noted here, the Bureau also believes that the impact of the final rule on the depository institutions and credit unions with $10 billion or less in total assets will be similar to the impact for creditors as a whole. The primary difference in the impact on these institutions is likely to come from differences in the level of complexity of operations, compliance systems, and software of these institutions. The three representative lender types, which the Bureau analyzed when considering the benefits, costs and impacts of the final rule, incorporate differences in complexity and infrastructure across financial institutions, and the effect of these differences on impacts of the final rule.

Based on Call Report data for December 2013, 13,454 of 13,565 depository institutions and credit unions had $10 billion or less in total assets. Based on 2013 HMDA data, and the reporting requirement for closed-end mortgage loans in the final rule, approximately 4,800 of these depository institutions and credit unions would be required to report data on closed-end mortgage loans. Six of the estimated 29 institutions that would have been required to report on a quarterly basis in 2014 had the final rule been in effect were depository institutions or credit unions with $10 billion or less in total assets. Given their large loan/application register volumes, all of these institutions are assumed to be tier 1 institutions. Finally, approximately 749 institutions will meet the threshold for open-end lines of credit and be required to report data on these products. The Bureau estimates that 660 of these institutions are depository institutions and credit unions with $10 billion or less in total assets. Under all of these assumptions, the Bureau estimates that the market-level impact of the final rule on operational costs for depository institutions and credit unions with $10 billion or less in total assets will be a cost of between $27,600,000 and $44,500,000. Using a discount rate of 7 percent, the net present value of this cost over five years is between $113,000,000 and $182,500,000. Regarding one-time costs, the Bureau estimates that the market-level impact of the final rule for depository institutions and credit unions with $10 billion or less in total assets is between $637,200,000 and $1,252,300,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time cost is between $155,400,000 and $305,400,000.

2. Impact of the Provisions in the Final Rule on Consumers in Rural Areas

The Bureau believes that the provisions in the final rule will not impose direct costs to consumers in rural areas. However, as with all consumers, consumers in rural areas may bear some indirect costs of the final rule. This will occur if financial institutions serving rural areas are HMDA reporters and if these institutions pass on some or all of the cost increase to consumers.

Recent research suggests that financial institutions that primarily serve rural areas are generally not HMDA reporters.[517] The Housing Assistance Council (HAC) suggests that the asset and geographic coverage criteria disproportionately exempt small lenders operating in rural communities. For example, HAC uses 2009 Call Report data to show that approximately 700 FDIC-insured lending institutions had assets totaling less than the HMDA institutional coverage threshold and were headquartered in rural communities. These institutions, which would not be HMDA reporters, may represent one of the few sources of credit for many rural areas. Research by economists at the Federal Reserve Board also suggests that HMDA's coverage of rural areas is limited, especially areas further from MSAs.[518] If a large portion of the rural housing market is serviced by financial institutions that are not HMDA reporters, any indirect impact of the changes on consumers in rural areas will be limited, as the changes directly involve none of those financial institutions.

Although some research suggests that HMDA currently does not cover a significant number of financial institutions serving the rural housing market, HMDA data do contain information for some covered loans involving properties in rural areas. These data can be used to estimate the number of HMDA reporters servicing rural areas, and the number of consumers in rural areas that might potentially be affected by the changes to Regulation C. For this analysis, the Bureau uses non-MSA areas as a proxy for rural areas, with the understanding that portions of MSAs and non-MSAs may contain urban and rural territory and populations. In 2013, 5,678 HMDA reporters reported applications, originations, or purchased loans for property located in geographic areas outside of an MSA.[519] This count

[516] The Bureau also estimates that this change will increase ongoing operational costs by approximately $800 and $5,000 per year for representative tier 3 and 2 institutions, respectively, were these institutions required to report quarterly. However, since the Bureau believes that all the financial institutions subject to quarterly reporting under the final rule will be tier 1 institutions, the estimates for tier 3 and tier 2 institutions have been excluded. These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit.

[517] *See* Keith Wiley, Housing Assistance Council, *What Are We Missing? HMDA Asset-Excluded Filers,* (2011), *available at http://www.ruralhome.org/storage/documents/smallbanklending.pdf*; Lance George and Keith Wiley, Housing Assistance Council, *Improving HMDA: A Need to Better Understand Rural Mortgage Markets,* (2010), *available at http://www.ruralhome.org/storage/documents/notehmdasm.pdf.*

[518] Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *Opportunities and Issues in Using HMDA Data,* 29 J. of Real Estate Research 352 (2007), *available at http://pages.jh.edu/jrer/papers/pdf/past/vol29n04/02.351_380.pdf.*

[519] These counts exclude preapproval requests that were denied or approved but not accepted, because geographic information is typically not available for these transactions.

provides some sense of the number of financial institutions that could potentially pass on impacts of the final rule to consumers in rural areas.[520] In total, these 5,678 financial institutions reported 1,989,000 applications, originations, or purchased loans for properties in non-MSA areas. This number provides some sense of the number of consumers in rural areas that could potentially be impacted indirectly by the changes in the final rule. In general, individual financial institutions report small numbers of closed-end mortgage loans from non-MSAs, as approximately 70 percent reported fewer than 100 closed-end mortgage loans from non-MSAs.

Following microeconomic principles, the Bureau believes that financial institutions will pass on increased variable costs to future mortgage applicants but will absorb one-time costs and increased fixed costs if financial institutions are profit maximizers and the market is perfectly competitive.[521] The Bureau defines variable costs as costs that depend on the number of applications received. Based on initial outreach efforts, the following five operational steps affect variable costs: Transcribing data, resolving reportability questions, transferring data to an HMS, geocoding, and researching questions. The primary impact of the final rule on these operational steps is an increase in time spent per task. Overall, the Bureau estimates that the impact of the final rule on variable costs per application is $23 for a representative tier 3 financial institution, $0.20 for a representative tier 2 financial institution, and $0.10 for a representative tier 1 financial institution.[522] The 5,678 financial institutions that served rural areas would attempt to pass these variable costs on to all future mortgage customers, including the estimated 2 million consumers from rural areas. Amortized over the life of the loan, this expense would represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if these financial institutions pass on these costs to consumers.

During the Small Business Review Panel process, some small entity representatives noted that they would attempt to pass on all increased compliance costs associated with the final rule, but that this would depend upon the competiveness of the market in which they operate, especially for smaller financial institutions. In addition, some small entity representatives noted that they would attempt to pass on costs through higher fees on other products, exit geographic or product markets, or spend less time on customer service. The similar concern was echoed by some industry comments to the proposal. To the extent that the market is less than perfectly competitive and the lenders are able to pass on a greater amount of these compliance costs, the costs to consumers will be slightly larger than the estimates described above. Nevertheless, the Bureau believes that the potential costs that will be passed on to consumers are small.

On the benefit side, the expanded institutional and transactional coverage, and reporting requirements may indirectly benefit consumers in rural areas to the extent that HMDA reporters serve these areas. Specifically, the revisions in the final rule will provide the public and public officials with information to help determine whether financial institutions are serving the housing needs of rural communities, to target public investment to attract private investment in rural communities, and to identify possible discriminatory lending patterns and enforce antidiscrimination statutes.

Given the differences between rural and non-rural markets in structure, demand, supply, and competition level, consumers in rural areas may experience benefits and costs from the final rule that are different than those experienced by consumers in general. To the extent that the impacts of the final rule on creditors differ by type of creditor, this may affect the costs and benefits of the final rule on consumers in rural areas. The Bureau solicited feedback regarding the impact of the proposed rule on consumers in rural areas. One national trade association commenter cited a study from several individuals at the Mercatus Center at George Mason University that found compliance burden had increased for over 90 percent of community banks surveyed, and that banks in rural areas were particularly impacted. This survey focused on the overall burden of all recent regulation, and did not focus on the burden specific to HMDA. Therefore, the Bureau was unable to determine how much of the increased cost to attribute to the final HMDA rule and has not revised the estimates contained in this part based on the particular study cited by the commenter.

III. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule for which notice-and-comment procedures are required by 5 U.S.C. 553.[523] These analyses must describe the impact of the rule on small entities.[524] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[525] The Bureau is also subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[526]

In the proposal, the Bureau did not certify that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired a Small Business Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The 2014 HMDA Proposal preamble included detailed information on the Small Business Review Panel. The Panel's advice and recommendations

[520] These counts do not include the estimated 750 or so financial institutions that will be required to report open-end lines of credit, or the estimated 75–450 nondepository institutions that will be required to report due to the coverage threshold being reduced from 100 to 25. In both instances, data required to estimate how many of these institutions serve rural areas is limited. To the extent that some do serve rural areas, the numbers presented will be underestimates.

[521] If markets are not perfectly competitive or financial institutions are not profit maximizers then what financial institutions pass on may differ. For example, they may attempt to pass on one-time costs and increases in fixed costs, or they may not be able to pass on variable costs.

[522] These cost estimates do not incorporate the impact of operational improvements and additional help sources. These estimates are for financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

[523] 5 U.S.C. 601 *et. seq.*

[524] For purposes of assessing the impacts of the final rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[525] 5 U.S.C. 605(b).

[526] 5 U.S.C. 609.

are found in the Small Business Review Panel Final Report [527] and were discussed in the section-by-section analysis of the proposed rule. The 2014 HMDA Proposal also contained an IFRA pursuant to section 603 of the RFA. In this IRFA, the Bureau solicited comment on any costs, recordkeeping requirements, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses; comment regarding any Federal rules that would duplicate, overlap, or conflict with the proposed rule; and comment on alternative means of compliance for small entities. Comments addressing individual provisions of the final rule are addressed in the section-by-section analysis above. Comments addressing the impact on small entities are discussed below. Many of these comments implicated individual provisions of the final rule or the Bureau's Dodd-Frank Act section 1022 discussion, and are also addressed in those parts.

Based on the comments received, and for the reasons stated below, the Bureau believes the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

A. Statement of the Need for, and Objectives of, the Rule

The Bureau is publishing the final rule to implement section 1094 of the Dodd-Frank Act, which amended HMDA to improve the utility of the HMDA data.[528] HMDA was intended to provide the public with information that can be used to help determine whether financial institutions are serving the housing needs of their communities, to assist public officials in distributing public-sector investment so as to attract private investment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. Historically, HMDA has been implemented by the Board through Regulation C, 12 CFR part 203. In 2011, the Bureau established a new Regulation C, 12 CFR part 1003, substantially duplicating the Board's Regulation C, making only non-substantive, technical, formatting, and stylistic changes. Congress has periodically modified HMDA, and the Board routinely updated Regulation C, in order to ensure that the data continued to fulfill HMDA's purposes. In 2010, Congress responded to the mortgage crisis by passing the Dodd-Frank Act, which enacted changes to HMDA, as well as directing reforms to the mortgage market and the broader financial system. In addition to transferring rulemaking authority for HMDA from the Board to the Bureau, section 1094 of the Dodd-Frank Act, among other things, directed the Bureau to implement changes requiring the collection and reporting of several new data points, and authorized the Bureau to require financial institutions to collect and report such other information as the Bureau may require.

A full discussion of the reasons for the final rule may be found in parts V and VII, above. Briefly, the rule addresses the market failures caused by the underproduction of public mortgage data and the information asymmetries in credit markets through improved institutional and transactional coverage and additional information about underwriting, pricing, and property characteristics. The final rule will improve the ability of regulators, industry, advocates, researchers, and economists to assess housing needs, public investment, possible discrimination, and market trends.

B. Statement of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made as a Result of Such Comments

In accordance with section 603(a) of the RFA, the Bureau prepared an IRFA. In the IRFA, the Bureau estimated the possible compliance costs for small entities with respect to each major component of the rule against a pre-statute baseline. The Bureau requested comment on the IRFA.

Very few commenters specifically addressed the IRFA. Comments that repeated the same issues raised by the Office of Advocacy of the U.S. Small Business Administration are addressed in part VIII.C, below. Other comments related to small financial institutions are discussed here. As discussed in the section 1022 analysis in part VII above, several commenters addressed the impact of the proposed rule on small financial institutions. Several industry commenters stated that the proposed rule would create a competitive disadvantage for small financial institutions. For example, these commenters noted that larger financial institutions would be able to distribute the cost of compliance across a larger transaction base. Several industry commenters cited reports from Goldman Sachs and Banking Compliance Index figures to support claims that regulatory burdens were disproportionally affecting small financial institutions and preventing low income consumers from accessing certain financial products. Another industry commenter cited the decline in HMDA reporters from 2012 to 2013 as evidence that small financial institutions have left the market.

The Bureau presented separate impact estimates for low-, moderate-, and high-complexity institutions, broadly reflecting differences in impact across institutions of different size, and has recognized that on average the smaller institution will incur slightly higher compliance costs per HMDA record due to the final rule than larger institutions. However, the magnitude of such impact on a per application basis is fairly small. Specifically, for low-complexity institutions, which best represent small institutions, the estimated impact on operational costs, after the operational modifications the Bureau is making, is approximately $1,900 per year.[529] This translates into approximately a $38 increase in per application costs. Based on recent survey estimates of net income from the MBA, this impact represents approximately 1.3 percent ($38/$2,900) of net income per origination for mid/medium sized banks, which the Bureau views as relatively small. Therefore, the Bureau concludes that the final rule will have little impact on any competitive disadvantage faced by small institutions.

Other industry commenters believed that the proposal would likely increase the cost of credit for consumers. Several of these commenters cited the cost of systems modifications associated with reporting home-equity lines of credit. A few commenters claimed that certain small financial institutions, such as small credit unions, small farm credit lenders, or small banks, would be faced with difficult choices, such as merging, raising prices, originating fewer loans, or exiting the market. A small number of industry commenters stated that they would double their origination fees as a result of the proposed rule. A national trade association commenter cited, among other things, a study from several individuals at the Mercatus Center at

[527] *See Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking* (April 24, 2014), *http://files.consumerfinance.gov/f/201407_cfpb_report_hmda_sbrefa.pdf.*

[528] Dodd-Frank Act, Public Law 111–203, section 1094, 124 Stat. 1376, 2097 (2010).

[529] This estimate applies to financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of creditor quarterly reporting.

George Mason University and a survey of its members showing that small financial institutions were decreasing their mortgage lending activity in response to increased regulatory burdens. Similarly, other industry commenters pointed to a report from Goldman Sachs showing that higher regulatory costs had priced some low-income consumers out of the credit card and mortgage markets. Following standard economic theory, in a perfectly competitive market where financial institutions are profit maximizers, the affected financial institutions would pass on to consumers the marginal, *i.e.,* variable, cost per application or origination and would absorb the one-time and increased fixed costs of complying with the rule. Overall, the Bureau estimates that the final rule will increase variable costs by $23 per application for representative tier 3 institutions, $0.20 per application for representative tier 2 institutions, and $0.10 per application for representative tier 1 institutions.[530] These expenses will be amortized over the life of a loan and represent a negligible increase in the cost of a mortgage loan. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term even if institutions pass on these costs to consumers.

Several industry commenters explained that expanding the rule to include commercial-purpose transactions would increase the cost of business credit. These commenters stated that financial institutions would be less willing to take the dwelling of a borrower as collateral, which would decrease the availability of credit. However, as explained above, the Bureau is specifically exempting certain commercial-purpose transactions from the scope of the final rule so that coverage of commercial-purpose transactions is generally maintained at its existing level.[531] Accordingly, the Bureau expects that the final rule will not have a significant impact on the availability of commercial credit.

Other industry commenters believed that any utilization of the MISMO data standards would burden small entities. These commenters stated that small financial institutions would have to incur training costs to familiarize themselves with MISMO. One national trade association commenter reported that only 22 percent of community banks use MISMO. These commenters believe that MISMO alignment should be optional for small financial institutions. As explained above, the Bureau believes that these commenters have misunderstood the implications of the proposed MISMO alignment. The Bureau did not propose to, and the final rule does not, require any financial institution to use or become familiar with the MISMO data standards. Rather, the rule merely recognizes that many financial institutions are already using the MISMO standard for collecting and transmitting mortgage data, and has utilized similar definitions for certain data points in order to reduce burden. Thus, the rule decreases cost for those institutions that are familiar with MISMO. Financial institutions that are unfamiliar with MISMO may not realize a similar reduction in cost, but they will not experience any increased burden from the utilization of MISMO definitions because the final rule itself and the associated materials contain all of the necessary definitions and instructions for reporting HMDA data.

Several industry commenters believed that the Bureau had ignored the comments of the small entity representatives that participated in the Small Business Review Panel or had simply solicited feedback in response to their suggestions. As noted in the IRFA, the small entity representatives made several comments at the SBREFA Panel. Many of these suggestions have been reflected in the final rule. For example, the Bureau heard from small entity representatives that they rarely, if ever, receive requests for their modified loan/application registers, and the Small Business Review Panel recommended that the Bureau consider whether there is a continued need for small institutions to make their modified loan/application registers available. The final rule provides that financial institutions shall make available to the public a notice that clearly conveys that the institution's modified loan/application register may be obtained on the Bureau's Web site. This approach relieves small financial institutions of the obligation to provide the modified loan/application register to the public directly. Additionally, several small entity representatives expressed concern over the operational difficulties of geocoding and the data submission process in general. The Bureau is making operational enhancements and modifications to address these concerns. For example, the Bureau is working to provide implementation support similar to the support provided for the title XIV and TILA–RESPA Integrated Disclosure rules. The Bureau is also improving the geocoding process, creating a web-based HMDA data submission and edit-check system, developing a data-entry tool for small financial institutions that currently use Data Entry Software, and otherwise streamlining the submission and editing process to make it more efficient. All of these enhancements will improve the submission and processing of data, increase clarity, and reduce reporting burden. Finally, small entity representatives requested a two-year look-back period in the loan-volume threshold. The final rule includes a two-year look-back period. Under the final rule, a financial institution that does not meet the loan-volume thresholds established in the final rule and that experiences an unusual and unexpected high origination volume in one year will not be required to begin HMDA reporting unless and until the higher origination volume continues for a second year in a row.

In addition to modifying the proposed rule in direct response to suggestions from small entity representatives that participated in the Small Business Review Panel, the Bureau also modified the proposed rule based on responses to the Bureau's requests for feedback that were prompted by the small entity representatives. As one example, the proposed change in transactional coverage to a dwelling-secured basis would have extensively expanded reporting of commercial-purpose loans and lines of credit. In response to comments received about the cost impact of this proposal, the Bureau decided to maintain Regulation C's existing purpose-based coverage test for commercial-purpose transactions, which maintains coverage of commercial-purpose lending generally at existing levels. Similarly, the proposed change in transactional coverage to a dwelling-secured basis would have extensively expanded reporting of consumer-purpose open-end lines of credit. In response to comments received about the cost impact of this proposal, especially about the one-time costs of constructing the infrastructure to report data from a separate business line, the Bureau decided to adopt a separate loan-volume reporting threshold of 100 open-end lines of credit. This threshold will reduce reporting burden for small entities.

[530] These estimates apply to financial institutions that meet the threshold for reporting closed-end mortgage loans, but not for reporting of open-end lines of credit or quarterly reporting.

[531] The revisions to the final rule will require reporting of commercial-purpose lines of credit for the purposes of home purchase, home improvement, or refinancing. Reporting of these loans is not currently required, therefore it is possible that the coverage of commercial-purpose loans will increase slightly, but the Bureau believes that the impact will be minimal.

C. Response to the Chief Counsel for Advocacy of the Small Business Administration and Statement of Any Change Made in the Final Rule as a Result of the Comments

The SBA Office of Advocacy (Advocacy) provided a formal comment letter to the Bureau in response to the 2014 HMDA Proposal. Among other things, this letter expressed concern about the following issues: The expanded transactional coverage of the proposal, the analysis of the different loan-volume thresholds suggested by the small entity representatives, the requirement to report the discretionary data points, and the requirement to maintain modified loan/application registers.

First, Advocacy expressed concern over the expanded transactional coverage of the proposed rule. The proposed rule would have covered all dwelling-secured closed-end mortgage loans, open-end lines of credit, and reverse mortgages. Advocacy supported the Bureau's decision to eliminate reporting of non-dwelling-secured home improvement loans. However, Advocacy noted that reporting additional transactions was burdensome for small financial institutions and believed that the new transactions might cause certain small financial institutions to become HMDA reporters for the first time. Advocacy urged the Bureau not to adopt the expanded transactional coverage.

As described in greater detail in parts V and VII above, the Bureau considered the benefits and costs of the final rule's transactional coverage criteria. With respect to commercial-purpose transactions, the Bureau has decided to withdraw most of the expanded coverage of commercial-purpose loans. The Bureau is now limiting reporting of commercial-purpose loans and lines of credit to those for home purchase, home improvement, or refinancing purposes only. The Bureau is adopting the proposed expansion to consumer-purpose open-end lines of credit and reverse mortgages. Information about these types of transactions serves an important role in fulfilling HMDA's purposes. For example, among other things, data about reverse mortgages will help determine how the housing needs of seniors are being met, while data about open-end lines of credit will help assess housing-related credit being offered in particular communities.

Regarding the impact of the new transactions on the loan-volume threshold, the Bureau notes that the 25-loan threshold includes only closed-end mortgage loans. The final rule institutes a separate reporting threshold of 100 open-end lines of credit for institutional coverage. As shown in Table 8 in part VII.F.3, above, compared to the proposal, this separate open-end reporting threshold will achieve a significant reduction in burden by eliminating the number of institutions that would be required to report data concerning their open-end lines of credit, if any, by almost 3,400, most which are likely small financial institutions. The Bureau further estimates that the open-end reporting threshold will require no additional financial institutions to report HMDA data, as compared to the current rule, because it is the Bureau's belief that nondepository institutions commonly are not engaged in dwelling-secured open-end-line-of-credit lending, and the depository institutions and credit unions that will report open-end lines of credit will still be subject to all other reporting requirements and hence can only come from current HMDA reporters.[532] Therefore, the Bureau believes that the additional types of transactions required by the final rule will not impose a significant burden on small financial institutions or dramatically expand the institutional coverage of the rule.

Second, Advocacy believed that the loan-volume threshold was too low. Advocacy also expressed concern over the Bureau's consideration of alternative loan-volume thresholds. Advocacy stated that the 25-loan threshold would exclude approximately 70,000 records from depository institutions and include approximately 30,000 records from nondepository institutions. According to Advocacy, assuming that all excluded institutions were small entities, the proposal would exclude 21 percent of small entities. Finally, Advocacy urged the Bureau to provide a full analysis of the possible loan-volume thresholds suggested by the small entity representatives.

Throughout this rulemaking, the Bureau considered several higher loan-volume thresholds. These thresholds were evaluated based on their impact on the goals of the rulemaking, which include simplifying the reporting regime by establishing a uniform loan-volume threshold applicable to both depository and nondepository institutions; eliminating the burden of reporting from low-volume depository institutions while maintaining sufficient data for analysis at the national, local, and institutional levels; and increasing visibility into the home mortgage lending practices of nondepository institutions.

As described in parts V and VII.F.3, above, the 25-loan threshold for closed-end mortgage loans appropriately balances multiple competing interests and advances the goals of the rulemaking. The Bureau believes that the threshold reduces burden on small financial institutions while preserving important data about communities and increasing visibility into the lending practices of nondepository institutions. The 25-loan threshold will achieve a significant reduction in burden by eliminating reporting by about 20 percent of depository institutions that are currently reporting. As described in greater detail throughout this discussion, the Bureau estimates that the most significant driver of costs under HMDA is fixed costs associated with the requirement to report, rather than the variable costs associated with any specific aspect of reporting, such as the number or complexity of required data fields or the number of entries. For example, the estimated annual ongoing cost of reporting under the rule is approximately $4,400 for a representative tier 3 financial institution after accounting for operational improvements. Just over $2,300 of this annual ongoing cost is composed of fixed costs. As a comparison, each required data field accounts for approximately $43 of this annual ongoing cost. Thus, the 25-loan threshold for closed-end mortgage loans provides a meaningful reduction in burden.

Higher thresholds would further reduce burden but would produce data losses that would undermine the benefits provided by HMDA data. One of the most substantial impacts of any loan-volume threshold is the information that it provides about lending at the community level, including information about vulnerable consumers and the origination activities of smaller lenders. Public officials, community advocates, and researchers rely on HMDA data to analyze access to credit at the neighborhood-level and to target programs to assist underserved communities and consumers. For example, Lawrence, Massachusetts identified a need for homebuyer counseling and education based on HMDA data, which showed a high percentage of high-cost loans compared

[532] The Bureau estimates under the final rule, about 24 depository institutions and credit unions will report open-end lines of credit but not closed-end mortgage loans. However, even these future open-end-only reporters are not new to HMDA reporting, as they are currently reporting under HMDA but likely will stop reporting closed-end mortgage loans given their closed-end loan volumes fall below the 25-loan closed-end threshold.

to surrounding communities.[533] Similarly, HMDA data helped bring to light discriminatory lending patterns in Chicago neighborhoods, resulting in a large discriminatory lending settlement.[534] In addition, researchers and consumer advocates analyze HMDA data at the census tract level to identify patterns of discrimination at a national level.[535] Higher loan-volume thresholds would affect data about more communities and consumers. At a loan-volume threshold set at 100, according to 2013 HMDA data, the number of census tracts that would lose 20 percent of reported data would increase by almost eight times over the number with a threshold set at 25 loans. The number of affected LMI tracts would increase more than six times over the number at the 25-loan level. Tables 5–8 in part VII.F.3 provide additional information about how different reporting thresholds affect the number of financial institutions that would be required to report closed-end mortgage loans, as well as open-end lines of credit.

Additionally, the Bureau believes that it is important to increase visibility into nondepository institutions' practices due to the lack of adequate data regarding their lending activity. Uniform loan-volume thresholds of fewer than 100 loans annually will expand nondepository institution coverage, because the current test requires reporting by all nondepository institutions that meet the other applicable criteria and originate 100 loans annually.[536] Therefore, any threshold set at 100 loans would not provide any enhanced insight into nondepository institution lending and a threshold above 100 loans would actually decrease visibility into nondepository institutions' practices and hamper the ability of HMDA users to monitor risks posed to consumers by those institutions. The 25-loan volume threshold, however, achieves a significant expansion of nondepository institution coverage, with about a 40 percent increase in the number of reporting institutions.

Third, Advocacy stated that most small entities were concerned about the additional proposed data points that were not required by the Dodd-Frank Act. Advocacy believed that complying with the discretionary reporting requirements would impose additional expenses on small entities and might subject them to penalties for reporting errors. Therefore, Advocacy recommended that the Bureau exempt small entities from the reporting requirements regarding data points not mandated by the Dodd-Frank Act.

The Bureau considered exempting smaller financial institutions from the requirement to report some or all of the discretionary data points. As described above, however, because under a tiered reporting regime smaller financial institutions would not report all or some of the HMDA data points, tiered reporting would prevent communities and users of HMDA data from learning important information about the lending and underwriting practices of smaller financial institutions, which may differ from those of larger institutions. Second, as discussed above, the primary driver of HMDA costs is establishing and maintaining systems to collect and report data, not the costs associated with collecting and reporting a particular data field. Therefore, tiered reporting would reduce the costs of low-volume depository institutions somewhat, but not significantly.

Finally, Advocacy argued that requiring small entities to maintain modified loan/application registers was unduly burdensome because these institutions reported rarely being asked to provide such information to the public. Advocacy recommended removing small entities from this requirement. The Bureau generally agrees with these recommendations. As explained above, the final rule provides that financial institutions shall make available to the public a notice that clearly conveys that the institution's modified loan/application register may be obtained on the Bureau's Web site. This approach relieves all financial institutions, including small entities, of the obligation to provide the modified loan/application register to the public directly. The Bureau is also finalizing its proposal to provide that financial institutions shall make available to the public a notice that clearly conveys that the institution's disclosure statements may be obtained on the Bureau's Web site. This approach relieves all financial institutions, including small entities, of such burdens.

D. Description of and Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

As discussed in the proposal and Small Business Review Panel Report, for purposes of assessing the impacts of the final rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions.[537] A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[538] A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[539] A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or

[533] *See* City of Lawrence, *HUD Consolidated Plan 2010–2015,* at 68 (2010), *available at http://www.cityoflawrence.com/Data/Sites/1/documents/cd/Lawrence_Consolidated_Plan_Final.pdf.* Similarly, in 2008 the City of Albuquerque used HMDA data to characterize neighborhoods as ''stable,'' ''prone to gentrification,'' or ''prone to disinvestment'' for purposes of determining the most effective use of housing grants. *See* City of Albuquerque, *Five Year Consolidated Housing Plan and Workforce Housing Plan,* at 100 (2008), *available at http://www.cabq.gov/family/documents/ConsolidatedWorkforceHousingPlan20082012final.pdf.* As another example, Antioch, California, monitors HMDA data, reviews it when selecting financial institutions for contracts and participation in local programs, and supports home purchase programs targeted to households purchasing homes in Census Tracts with low loan origination rates based on HMDA data. *See* City of Antioch, *Fiscal Year 2012–2013 Action Plan,* at 29 (2012), *available at http://www.ci.antioch.ca.us/CitySvcs/CDBGdocs/Action%20Plan%20FY12-13.pdf. See, e.g.,* Dara D. Mendez et al., *Institutional Racism and Pregnancy Health: Using Home Mortgage Disclosure Act Data to Develop an Index for Mortgage Discrimination at the Community Level,* 126 Pub. Health Reports (1974-) Supp. 3, 102–114 (Sept/Oct. 2011) (using HMDA data to analyze discrimination against pregnant women in redlined neighborhoods), *available at http://www.publichealthreports.org/issueopen.cfm?articleID=2732.*

[534] *See, e.g.,* Yana Kunichoff, *Lisa Madigan Credits Reporter with Initiating Largest Discriminatory Lending Settlements in U.S. History* (June 14, 2013), *http://www.chicagonow.com/chicago-muckrakers/2013/06/lisa-madigan-credits-reporter-with-initiating-largest-discriminatory-lending-settlements-in-u-s-history/* (''During our ongoing litigation . . . the Chicago Reporter study looking at the HMDA data for the City of Chicago came out . . . It was such a startling statistic that I said . . . we have to investigate, we have to find out if this is true . . . We did an analysis of that data that substantiated what the Reporter had already found . . . [W]e ultimately resolved those two lawsuits. They are the largest fair-lending settlements in our nation's history.'')

[535] *See, e.g.,* California Reinvestment Coalition, et al, *Paying More for the American Dream VI: Racial Disparities in FHA/VA Lending, at http://www.woodstockinst.org/research/paying-more-american-dream-vi-racial-disparities-fhava-lending.* Likewise, researchers have analyzed GSE purchases in census tracts designated as underserved by HUD using HMDA data. James E. Pearce, *Fannie Mae and Freddie Mac Mortgage Purchases in Low-Income and High-Minority Neighborhoods: 1994–96,* Cityscape: A Journal of Policy Development and Research (2001), *available at http://www.huduser.org/periodicals/cityscpe/vol5num3/pearce.pdf.*

[536] In addition, nondepository institutions that originate fewer than 100 applicable loans annually are required to report if they have assets of at least $10 million and meet the other criteria. *See* 12 CFR 1003.2 (definition of financial institution).

[537] 5 U.S.C. 601(6).

[538] 5 U.S.C. 601(3).

[539] 5 U.S.C. 601(4).

special district with a population of less than 50,000.[540]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the final rule under consideration:

Table 1:
Classes of Small Entities Subject to Requirements of the Final Rule

Category	NAICS	Small Entity Threshold	Total Entities	Small Entities	Entities engaged in dwelling-secured mortgage transactions	Small entities engaged in dwelling-secured mortgage transactions	All HMDA Reporters (7,207)	Small Entities HMDA Reporters
Commercial banks & savings institutions[1]	522110, 522120	$500M assets	6,877	5,533	6,710	5,392	4,205	2,861
Credit Unions[2]	522130	$500M assets	6,687	6,252	4,943	4,508	2,018	1,603
Mortgage brokers and mortgage companies (Non-bank lenders)[3]	522310, 522292, 522298	$7M revenues $35.5M revenues	14,833	12,725	10,228	9,001	984	753

[1] Asset size is obtained from December 2013 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any mortgage transactions includes all open- and closed-end mortgage loans secured by 1-4 family residential properties, and all loans secured by multifamily residential properties from Schedule RC-C of the Call Report. Call Report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.

[2] Asset size and engagement in closed-end mortgage loans obtained from December 2013 National Credit Union Administration Call Report. The count of credit unions engaged in closed-end mortgage loans includes total first mortgage and other real estate loans, year-to-date from Section 2 of the Call Report. Call Report data aggregates lenders at the HMDA reporter level to the parent company, so these counts slightly understate the potential number of HMDA reporters.

[3] Total number of entities and small entities estimated based on HMDA data and the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for 2013. Difficulties merging HMDA and NMLSR data affected the accuracy of the count estimates.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

1. Reporting Requirements

HMDA requires financial institutions to report certain information related to covered loans to the Bureau or to the appropriate Federal agency.[541] Under Regulation C, all reportable transactions must be recorded on a loan/application register within 30 calendar days [542] after the end of the calendar quarter in which final action is taken. Currently, financial institutions must disclose to the public upon request a modified version of the loan/application register submitted to regulators.[543] Financial institutions must also make their disclosure statements, which are prepared by the FFIEC from data submitted by the institutions, available to the public upon request.[544]

The final rule modifies current reporting requirements and imposes new reporting requirements by requiring financial institutions to report additional information required by the Dodd-Frank Act, as well as certain information determined by the Bureau to be necessary and proper to effectuate HMDA's purposes. The rule also modifies the scope of the institutional and transactional coverage thresholds. In addition, under the final rule, financial institutions will make available to the public notices that clearly convey that the institution's disclosure statement and modified loan/application register may be obtained on the Bureau's Web site. Finally, financial institutions that reported at least 60,000 covered loans and applications, combined, excluding purchased loans, in the preceding calendar year will be required to report HMDA data on a quarterly basis to the appropriate Federal agency. These data will only be considered preliminary submissions, and the final rule provides a safe harbor that protects, in certain circumstances, a financial institution from being cited for violations of HMDA or Regulation C for errors and omissions in its quarterly submissions. The section-by-section analysis of the final rule in part V, above, discusses all of the additional required data points and the scope of the final rule in greater detail.

2. Recordkeeping Requirements

HMDA currently requires financial institutions to compile and maintain information related to transactions involving covered loans. HMDA section 304(c) requires that information required to be compiled and made

[540] 5 U.S.C. 601(5).

[541] 12 U.S.C. 2803(h)(1).

[542] 12 CFR 1003.4(a).

[543] 12 CFR 1003.5(c).

[544] 12 CFR 1003.5(b).

available under HMDA section 304, other than loan/application register information required under section 304(j), must be maintained and made available for a period of five years. HMDA section 304(j)(6) requires that loan/application register information for any year shall be maintained and made available, upon request, for three years. Regulation C requires that all reportable transactions be recorded on a loan/application register within thirty calendar days after the end of the calendar quarter in which final action is taken.[545] Regulation C further specifies that a financial institution shall retain a copy of its submitted loan/application register for its records for at least three years.[546]

The final rule will not modify the recordkeeping periods for financial institutions. The rule might, however, indirectly require additional recordkeeping in that it will require financial institutions to maintain additional information as a result of the expanded reporting requirements described above. However, the final rule reduces the amount of recordkeeping in other ways. Specifically, although the final rule does not eliminate the requirement that financial institutions retain a copy of their loan/application registers, the final rule does provide that financial institutions shall retain the notices concerning their disclosure statements and modified loan/application registers, not the disclosure statements or modified loan/application registers themselves, which may lessen the recordkeeping burden.

Benefits to small entities. HMDA is a data reporting statute, so all provisions of the final rule affect reporting requirements. Overall, the final rule has several potential benefits for small entities. A summary of these benefits is provided here, and more detailed discussions of these benefits are provided in the section 1022 discussion in part VII, above. First, the revision to the institutional coverage criteria, which imposes a 25-loan threshold for closed-end mortgage loans, will benefit depository institutions that are not significantly involved in originating dwelling-secured closed-end mortgage loans. The Bureau expects that most of these depository institutions are small entities. These depository institutions will no longer have to report closed-end mortgage loans under HMDA. The Bureau also estimates that most of the depository institutions with closed-end mortgage loan originations falling below the threshold will originate fewer than 100 open-end lines of credit, and thus not be required to report such transactions under HMDA. Therefore, they will no longer have to incur one-time costs, or any current or increased operational costs, imposed by the final rule.

Second, the Bureau adopted revisions to transactional coverage criteria that benefit small entities. As one example, the final rule eliminates reporting of non-dwelling-secured home improvement loans. This change reduces reporting burden to small entities to the extent that these entities offer such loans. As a second example, the overall change in transactional coverage to a dwelling-secured basis in the proposed rule extensively expanded reporting of commercial-purpose loans and lines. In response to comments received about the cost impact of this proposal, some of which came from small entities, the Bureau decided to retain Regulation C's existing purpose-based coverage test for commercial-purpose transactions, which maintains coverage of commercial-purpose lending generally at existing levels.

Third, the expanded transactional coverage provisions, combined with the additional data points being adopted, will improve the prioritization process that regulators and enforcement agencies use to identify institutions with higher fair lending risk. During prioritization analyses, the additional transactions and data points will allow for improved segmentation, so that applications are compared to other applications for similar products. In addition, the data points will add legitimate factors used in underwriting and pricing that are currently lacking in the HMDA data, helping regulators and government enforcement agencies better understand disparities in outcomes. These improvements will reduce false positives that occur when inadequate information causes lenders with low fair lending risk to be initially misidentified as high-risk. This reduction in false positives will improve allocation of examination resources so that lenders with low fair lending risk receive a reduced level of regulatory scrutiny. For small entities currently receiving regulatory oversight, this could greatly reduce the burden from fair lending examinations and enforcement actions.

Fourth, utilizing industry data standards may provide a benefit to some small entities, especially those originating and selling loans to the GSEs. The Bureau believes that promoting consistent data standards for both industry and regulatory use has benefits for market efficiency, market understanding, and market oversight. The efficiencies achieved by aligning HMDA data with widely used industry data standards should grow over time. Specific to small entities, outreach efforts have determined that aligning HMDA with industry data standards will reduce costs for training and researching questions.

Fifth, and finally, the additional fields will improve the usefulness of HMDA data for analyzing mortgage markets by the regulators and the public. For instance, data points such as non-amortizing features, introductory interest rate, and prepayment penalty term that are commonly related to higher risk lending will provide a better understanding of the types of products and features consumers are receiving. This will allow for improved monitoring of trends in mortgage markets and help identify problems that could potentially harm consumers and society overall. Lowering the likelihood of future financial crises benefits all financial institutions, including small entities.

Costs to small entities. Overall, the final rule has several potential costs for small entities. A summary of these costs is provided here, and more detailed discussions of these costs are provided in the section 1022 analysis in part VII, above. First, the adopted revision to the coverage criteria raises the closed-end mortgage loan reporting threshold for depository institutions from one to 25 loans and lowers the reporting threshold for nondepository institutions from 100 to 25 loans. Based on 2012 HMDA and NMLSR data, the Bureau estimates that an additional 75–450 nondepository institutions will be required to report as a result of this revision. The Bureau expects most of the affected nondepository institutions to be small entities. The additional nondepository institutions that will now be required to report under HMDA will incur one-time start-up costs to develop the necessary reporting infrastructure, as well as the ongoing operational costs to report.

Second, for financial institutions subject to the final rule, the adopted revisions to transactional coverage will require reporting of open-end lines of credit, and require reporting of all closed-end home-equity loans and reverse mortgages. To the extent that small entities offer these products, these additional reporting requirements will increase operational costs as costs increase, for example, to transcribe data, resolve reportability questions, transfer data to HMS, and research questions.

Third, the final rule adds additional data points identified by the Dodd-Frank Act and that the Bureau believes are necessary to close information gaps. As part of this final rule, the Bureau is

[545] 12 CFR 1003.4(a).

[546] 12 CFR 1003.5(a).

aligning all current and final data points to industry data standards to the extent practicable. The additional data points will increase ongoing operational costs, and impose one-time costs as small entities modify reporting infrastructure to incorporate additional fields. The transition to industry data standards will offset this cost slightly through reduced costs of researching questions and training.

3. Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(a)(5) of the RFA requires an estimate of the classes of small entities that will be subject to the requirement. The classes of small entities that will be subject to the reporting, recordkeeping, and compliance requirements of the final rule are the same classes of small entities that are identified in part VIII.D, above.

Type of professional skills required. Section 604(a)(5) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records required by the rule. The recordkeeping and compliance requirements of the final rule that will affect small entities are summarized above.

Based on outreach with financial institutions, vendors, and governmental agency representatives, the Bureau classified the operational activities that financial institutions currently use for HMDA data collection and reporting into 18 operational ''tasks'' which can be further grouped into four ''primary tasks.'' These are:

1. Data collection: Transcribing data, resolving reportability questions, and transferring data to an HMS.

2. Reporting and resubmission: Geocoding, standard annual edit and internal checks, researching questions, resolving question responses, checking post-submission edits, filing post-submission documents, creating modified loan/application register, distributing modified loan/application register, distributing disclosure statement, and using vendor HMS software.

3. Compliance and internal audits: Training, internal audits, and external audits.

4. HMDA-related exams: Examination preparation and examination assistance.

All of these tasks are related to the preparation of reports or records and most of them are performed by compliance personnel in the compliance department of financial institutions. For some financial institutions, however, the data intake and transcription stage could involve loan officers or processors whose primary function is to obtain or process loan applications. For example, the loan officers would take in government monitoring information from the applicants and input that information into the reporting system. However, the Bureau believes that such roles generally do not require any additional professional skills related to recordkeeping or other compliance requirements of this final rule that are not otherwise required during the ordinary course of business for small entities.

The type of professional skills required for compliance varies depending on the particular task involved. For example, data transcription requires data entry skills. Transferring data to an HMS and using vendor HMS software requires knowledge of computer systems and the ability to use them. Researching and resolving reportability questions requires a more complex understanding of the regulatory requirements and the details of the relevant line of business. Geocoding requires skills in using geocoding software, web systems, or, in cases where geocoding is difficult, knowledge of the local area in which the property is located. Standard annual editing, internal checks, and post-submission editing require knowledge of the relevant data systems, data formats, and HMDA regulatory requirements in addition to skills in quality control and assurance. Filing post-submission documents, creating modified loan/application registers, and distributing modified loan/application registers and disclosure statements require skills in information creation, dissemination, and communication. Training, internal audits, and external audits require communications skills, teaching skills, and regulatory knowledge. HMDA-related examination preparation and examination assistance involve knowledge of regulatory requirements, the relevant line of business, and the relevant data systems. Tables 2–4 in part VII.F.2 provide detailed estimates of the costs of conducting each of these operational tasks.

The Standard Occupational Classification (SOC) code has compliance officers listed under code 13–1041. The Bureau believes that most of the skills required for preparation of the reports or records related to this final rule are the skills required for job functions performed in this occupation. However, the Bureau recognizes that under this general occupational code there is a high level of heterogeneity in the type of skills required as well as the corresponding labor costs incurred by the financial institutions performing these functions.

During the Small Business Review Panel process, some small entity representatives noted that, due to the small size of their institutions, they do not have separate compliance departments exclusively dedicated to HMDA compliance. Their HMDA compliance personnel are often engaged in other corporate compliance functions. To the extent that the compliance personnel of a small entity are divided between HMDA compliance and other functions, the skills required for those personnel may differ from the skills required for fully-dedicated HMDA compliance personnel. For instance, some small entity representatives noted that high-level corporate officers such as CEOs and senior vice presidents could be directly involved in some HMDA tasks.

The Bureau acknowledges the possibility that certain aspects of the final rule may require some small entities to hire additional compliance staff. The Bureau has no evidence that such additional staff will possess a qualitatively different set of professional skills than small entity staff employed currently for HMDA purposes. It is possible, however, that compliance with the final rule may emphasize certain skills. For example, additional data points may increase demand for skills involved in researching questions, standard annual editing, and post-submission editing. On the other hand, the Bureau is making operational enhancements and modifications to alleviate some of the compliance burden. For example, the Bureau is working to provide implementation support similar to the support provided for the title XIV and TILA–RESPA Integrated Disclosure rules. The Bureau is also improving the geocoding process, creating a web-based HMDA data submission and edit-check system, developing a data-entry tool for small financial institutions that currently use Data Entry Software, and otherwise streamlining the submission and editing process to make it more efficient. Such enhancements may also change the relative composition of HMDA compliance personnel and the skills involved in recording and reporting data. Nevertheless, the Bureau believes that compliance will still involve the general set of skills identified above.

The recordkeeping and reporting requirements associated with the final rule will also involve skills for

information technology system development, integration, and maintenance. Financial institutions often use an HMS for HMDA purposes. An HMS could be developed by the institution internally or purchased from a third-party vendor. Under the final rule, the Bureau anticipates that most of these systems will need substantial updates to comply with the new requirements. It is possible that other systems used by financial institutions, such as loan origination systems, might also need modification to be compatible with the updated HMS. The professional skills required for this one-time updating will be related to software development, testing, system engineering, information technology project management, budgeting, and operations.

Based on feedback from the small entity representatives, many small business HMDA reporters rely on FFIEC DES tools and do not use a dedicated HMS. The Bureau is working to create a web-based HMDA data submission and edit-check system and develop a data-entry tool for small financial institutions that currently use DES that will allow financial institutions to use the software from multiple terminals in different branches and might reduce the required information technology implementation cost for small financial institutions.

F. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

The Bureau understands that the new provisions will impose a cost on small entities, and has attempted to mitigate the burden consistent with statutory objectives. The Bureau has adopted a number of modifications to particular provisions designed to reduce burden, which are described in the section-by-section analysis and the section 1022 analysis in parts V and VII, above. Several of the more significant burden-reducing steps reflected in the final rule are also described here.

First, by raising the loan-volume threshold applicable to closed-end mortgage loans to 25 loans for depository institutions and adopting a threshold of 100 open-end lines of credit, the Bureau has provided substantial relief to small entities falling below these thresholds. As described in greater detail throughout this discussion, the Bureau estimates that the most significant driver of costs under HMDA is fixed costs associated with the requirement to report, rather than the variable costs associated with any specific aspect of reporting, such as the number or complexity of required data fields or the number of entries. For example, the estimated annual ongoing cost of reporting under the rule is approximately $4,400 for a representative tier 3 financial institution. Just over $2,300 of this annual ongoing cost is composed of fixed costs. As a comparison, each required data field accounts for approximately $43 of this annual ongoing cost. Thus, the closed-end reporting threshold provides a meaningful reduction in burden.

Second, the Bureau is providing that financial institutions shall make available to the public notices that clearly convey that the institutions' disclosure statements and modified loan/application registers may be obtained on the Bureau's Web site. This approach relieves all financial institutions, including small entities, of the obligation to provide the disclosure statement and modified loan/application register to the public directly. It also eliminates the risks to financial institutions from missing the publication deadline and from errors in preparing the modified loan/application register that could result in the unintended disclosure of data. The Bureau believes that these aspects of the final rule will be beneficial to small entities.

Third, the Bureau adopted revisions to transactional coverage criteria that benefit small entities. As one example, the final rule eliminates reporting of non-dwelling-secured home improvement loans. This change reduces reporting burden to small entities to the extent that these entities offer such loans. As a second example, the overall change of transactional coverage to a dwelling-secured basis in the proposed rule would have extensively expanded reporting of commercial-purpose loans and lines of credit. In response to comments received about the cost impact of this proposal, some of which came from small entities, the Bureau decided to maintain Regulation C's existing purpose-based coverage test for commercial-purpose transactions, which maintains coverage of commercial-purpose transactions generally at existing levels.

Fourth, and finally, the Bureau is making operational enhancements and modifications to improve the data submission process. For example, the Bureau is working to provide implementation support similar to the support provided for title XIV and TILA–RESPA Integrated Disclosure rules. The Bureau is also improving the geocoding process, creating a web-based HMDA data submission and edit-check system, developing a data-entry tool for small financial institutions that currently use Data Entry Software, and otherwise streamlining the submission and editing process to make it more efficient. All of these enhancements will improve the submission and processing of data, increase clarity, and reduce reporting burden.

The section-by-section analysis, section 1022 analysis, and response to the comments from the Chief Counsel for Advocacy of the Small Business Administration, above, discuss the steps that the Bureau has considered and rejected, including adopting a higher loan-volume threshold and exempting small entities from the discretionary reporting requirements or from the reporting requirements altogether.

G. Description of the Steps the Agency Has Taken To Minimize Any Additional Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters.[547] To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the SBA in December 2013 that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel for Advocacy of the SBA through the Small Business Review Panel outreach concerning any projected impact of the proposed rule on the cost of credit for small entities, as well as any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities.[548] The Bureau sought to collect the advice and recommendations of the small entity representatives during the Panel Outreach Meeting regarding these issues because, as small financial service providers, the small entity representatives could provide valuable input on any such impact related to the proposed rule.[549]

Following the Small Business Review Panel and as stated in the proposal, the Bureau believed that the rule would have a minimal impact on the cost of business credit. The small entity representatives had few comments on

[547] 5 U.S.C. 603(d).

[548] *See* 5 U.S.C. 603(d)(2). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel for Advocacy of the SBA with respect to the Small Business Review Panel outreach pursuant to RFA section 609(b)(1).

[549] *See* 5 U.S.C. 603(d)(2)(B).

the impact on the cost of business credit, but a few representatives noted that they would likely have to pass additional costs on to business customers. The Bureau noted that the proposed rule would cover certain dwelling-secured loans used for business purposes. As explained above, the final rule does not adopt the proposed expansion of reporting for commercial transactions. The final rule generally requires reporting of consumer-purpose mortgage loans, and exempts loans for a business or commercial purpose unless the loan is a home improvement loan, a home purchase loan, or a refinancing. Maintaining coverage of commercial loans at its current level will minimize the impact of the cost of credit for small entities. The Bureau expects any such increase to be minimal.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[550] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. The information collection requirements contained in Regulation C are currently approved by OMB under OMB control number 3170–0008.

On August 29, 2014, notice of the proposed rule was published in the **Federal Register**. The Bureau invited comment on: (1) Whether the proposed collection of information is necessary for the proper performance of the Bureau's functions, including whether the information has practical utility; (2) the accuracy of the Bureau's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The comment period for the proposal expired on October 29, 2014.

The Bureau received almost no comments specifically addressing the PRA notice. One industry commenter noted that the proposal's total estimated burden of 4,700,000 hours per year, if divided evenly among all respondents, was 752 hours, or the equivalent to a full-time employee working 19 weeks. The commenter was concerned with the amount of burden represented by this figure. As the commenter acknowledged, 4,700,000 hours represented the total estimated burden hours imposed by the entire rule, not just the amended provisions, for all persons associated with all HMDA reporters. For any individual financial institution, the estimated burden hours may be far less than the 752-hour estimate derived by the commenter. For example, the Bureau estimates that the total annual burden of all reporting, recordkeeping, and third-party disclosure requirements for a tier 3 financial institution is approximately 134 hours per year.

As described below, the final rule amends the information collection requirements contained in Regulation C.[551] The information collection requirements currently contained in Regulation C remain in effect and are approved by OMB under OMB control number 3170–0008. This final rule contains information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained. The revised information collection requirements are contained in §§ 1003.4 and 1003.5 of the final rule. The Bureau will publish a separate notice in the **Federal Register** announcing OMB's action on these submissions, which will include the OMB control number and expiration date.

The title of this information collection is Home Mortgage Disclosure (Regulation C). The frequency of response is annually, quarterly, and on-occasion. The Bureau's regulation will require financial institutions that meet certain thresholds to maintain data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations, to update the information quarterly, and to report the information annually or quarterly. Financial institutions must also make certain information available to the public upon request.

The information collection requirements in this final rule will be mandatory.[552] Certain data fields will be removed or modified before they are made available to the public, as required by the statute and regulation. These removals or modifications will be determined through the Bureau's assessment under its balancing test of the benefits and risks created by the disclosure of loan-level HMDA data. The non-removed and unmodified data will be made publicly available and are not considered confidential. Data not made publicly available are considered confidential under the Bureau's confidentiality regulations, 12 CFR part 1070 *et seq.,* and the Freedom of Information Act.[553] The likely respondents will be financial institutions—specifically banks, savings associations, or credit unions (depository institutions), and for-profit mortgage-lending institutions (nondepository institutions)—that meet the tests for coverage under Regulation C. These respondents will be required under the rule to maintain, disclose to the public, and report to Federal agencies, information regarding covered loans and applications for covered loans.

For the purposes of this PRA analysis, the Bureau estimates that, under the final rule, approximately 1,400 depository institutions that currently report HMDA data will no longer be required to report, and that approximately 75–450 nondepository institutions that currently do not report HMDA data will now be required to report. In 2013, approximately 7,200 financial institutions reported data under HMDA. The adopted coverage changes will reduce the number of reporters by an estimated 950 reporters for an estimated total of approximately 6,250. Under the final rule, the Bureau generally will account for the paperwork burden for all respondents under Regulation C. Using the Bureau's burden estimation methodology, which projects the estimated burden on several types of representative respondents to the entire market, the Bureau believes the total estimated industry burden for the approximately 6,250 respondents[554] subject to the rule will be approximately 8,300,000 hours per year.[555] The Bureau

[550] 44 U.S.C. 3501 *et seq.*

[551] 12 CFR part 1003.

[552] *See* 12 U.S.C. 2801 *et seq.*

[553] 5 U.S.C. 552(b)(6).

[554] The count of 6,250 is constructed as the number of HMDA reporters in 2013 (7,200) less the estimated 1,400 depository institutions that will no longer have to report under the adopted coverage rules plus the additional 75–450 estimated nondepository institutions that will have to begin reporting under the adopted coverage rules.

[555] The Bureau estimates that, for all HMDA reporters, the burden hours will be approximately 6,851,000 to 9,779,000 hours per year. 8,300,000 is approximately the mid-point of this estimated range. These burden hour estimates include

Continued

expects that the amount of time required to implement each revision of the final rule for a given institution may vary based on the size, complexity, and practices of the respondent.

In 2013, a total of 145 financial institutions reported HMDA data to the Bureau. Currently, only depository institutions with over $10 billion in assets and their affiliates report their HMDA data to the Bureau. Using 2013 loan/application register sizes as a proxy to assign these 145 financial institutions into tiers yields 84, 39, and 22 tier 1, 2, and 3 financial institutions, respectively.[556] The Bureau estimates that the current time burden for the Bureau reporters is approximately 690,000 hours per year. Eighteen of these 145 institutions reported over 60,000 HMDA loan/application register records and will therefore be required to report data quarterly. An estimated 74 of these 145 institutions would exceed the open-end reporting threshold of 100 open-end lines of credit. Including the modifications to the information collection requirements contained in the final rule, and the operations modernization measures, the Bureau estimates that the burden for annual and quarterly Bureau reporters will be 1,089,000 and 300,000 hours per year, respectively, for a total estimated burden hours of 1,389,000 per year. This represents an increase of approximately 699,000 burden hours over the estimated burden under the current rule.

A. Information Collection Requirements[557]

The Bureau believes that the following aspects of the final rule are information collection requirements under the PRA: (1) The requirement that financial institutions maintain copies of their submitted annual loan/application register information for three years and record information regarding reportable transactions for the first three quarters of the calendar year on a quarterly basis; (2) the requirement that financial institutions report HMDA data annually—and, in the case of financial institutions that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, for the first three quarters of the calendar year on a quarterly basis—to the appropriate Federal agency; and (3) the requirement that financial institutions provide notices that clearly convey that disclosure statements and modified loan/application registers may be obtained on the Bureau's Web site and maintain notices of availability of modified loan/application registers for three years and notices of availability of disclosure statements for five years.

1. Recordkeeping Requirements

Financial institutions are required to maintain a copy of both the submitted annual loan/application register and a notice of its availability for three years. However, financial institutions no longer have to maintain the modified loan/application register. Similarly, financial institutions are required to maintain the notice of availability of their disclosure statements for five years, but no longer have to maintain the disclosure statements themselves. Therefore, the final rule includes changes that both increase and decrease the documentation or non-data-specific information that financial institutions will have to maintain. The Bureau believes that the net impact of these changes on recordkeeping requirements is minimal. In addition to recordkeeping requirements related to the loan/application register and disclosure statements, the rule increases the number of data fields, and possibly the number of records, that financial institutions are required to gather and report. The Bureau estimates that the current time burden of reporting for Bureau reporters is approximately 296,000 hours per year. The Bureau estimates that, with the final amendments and the operations modernization, the time burden for annual and quarterly Bureau reporters will be approximately 417,000 and 112,000 hours per year, respectively, for a total estimate of approximately 529,000 burden hours per year. This represents an increase of approximately 233,000 burden hours over the estimated burden under the current rule.

2. Reporting Requirements

HMDA is a data reporting statute, so most provisions of the rule affect reporting requirements, as described above. Specifically, financial institutions are required annually to report HMDA data to the Bureau or to the appropriate Federal agency,[558] and all reportable transactions must be recorded on a loan/application register within 30 calendar days[559] after the end of the calendar quarter in which final action is taken. Additionally, financial institutions that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, will be required to report HMDA data for the first three quarters of the calendar year on a quarterly basis to the Bureau or the appropriate Federal agency.

The Bureau estimates that the current time burden of reporting for Bureau reporters is approximately 391,000 hours per year. The Bureau estimates that, with the final amendments and the operations modernization, the time burden for annual and quarterly Bureau reporters will be approximately 671,000 and 188,000 hours per year, respectively, for a total estimate of approximately 859,000 burden hours per year. This represents an increase of approximately 468,000 burden hours over the estimated burden under the current rule.

3. Disclosure Requirements

The final rule modifies Regulation C's requirements for financial institutions to disclose information to the public. Under the final rule, a financial institution will no longer be required to make available to the public the modified loan/application register itself but must instead make available a notice informing the public that the institution's modified loan/application register may be obtained on the Bureau's Web site. Additionally, the final rule will require financial institutions to make available to the public their disclosure statements by making available a notice that clearly conveys that the disclosure statement may be obtained on the Bureau's Web site and that includes the Bureau's Web site address.

The Bureau estimates that the current time burden of disclosure for Bureau reporters is approximately 2,700 hours per year. The Bureau estimates that, with the final amendments and the operations modernization, the time burden for annual and quarterly Bureau reporters will be approximately 360 and 100 hours per year, respectively, for a total estimate of approximately 460 burden hours per year. This represents a decrease of approximately 2,240 burden hours from the estimated burden under the current rule. Burden hours have fallen here because financial institutions will no longer have to make their modified loan/application register

reporting of closed-end mortgage loans, open-end lines of credit, and quarterly reporting.

[556] The Bureau's estimation methodology is fully described in the section 1022 analysis in part VII, above.

[557] A detailed analysis of the burdens and costs described in this part can be found in the Paperwork Reduction Act Supporting Statement that corresponds to this final rule. The Supporting Statement is available at *www.reginfo.gov*.

[558] 12 U.S.C. 2803(h)(1).

[559] 12 CFR 1003.4(a).

or disclosure statements available to the public.

4. One-Time Costs Associated With the Adopted Information Collections

Financial institutions' management, legal, and compliance personnel will likely take time to learn new reporting requirements and assess legal and compliance risks. Financial institutions that use vendors for HMDA compliance will incur one-time costs associated with software installation, troubleshooting, and testing. The Bureau is aware that these activities will require time and that the costs may be sensitive to the time available for them. Financial institutions that maintain their own reporting systems will incur one-time costs to develop, prepare, and implement necessary modifications to those systems. In all cases, financial institutions will need to update training materials to reflect new requirements and activities and may incur certain one-time costs for providing initial training to current employees.

For current HMDA reporters, the Bureau estimates that the final rule will impose average one-time costs of $3,000 for tier 3 financial institutions, $250,000 for tier 2 financial institutions, and $800,000 for tier 1 financial institutions without considering the expansion of transactional coverage to include additional open-end lines of credit and reverse mortgages.[560] Including the estimated one-time costs to modify processes and systems for home-equity products, the Bureau estimates that the total one-time costs will be $3,000 for tier 3 institutions, $375,000 for tier 2 institutions, and $1,200,000 for tier 1 institutions. This yields an overall estimated market impact of between $725,900,000 and $1,339,000,000. Using a 7 percent discount rate and a five-year amortization window, the annualized one-time, additional cost is $177,000,000 to $326,600,000.

The revisions to the institutional coverage criteria will require an estimated 75–450 nondepository institutions that are currently not reporting under HMDA to begin reporting. These nondepository institutions will incur start-up costs to develop policies and procedures, infrastructure, and training. Based on outreach discussions with financial institutions prior to the proposal, the Bureau believes that these start-up costs will be approximately $25,000 for tier 3 financial institutions. Although origination volumes for these 75–450 nondepository institutions are slightly higher, the Bureau still expects most of these nondepository institutions to be tier 3 financial institutions. Under this assumption, the estimated overall market cost will be $11,300,000 (= 450 * $25,000).

B. Summary of Burden Hours

The tables below summarize the estimated annual burdens under Regulation C associated with the information collections described above for Bureau reporters and all HMDA reporters, respectively. The tables combine all three aspects of information collection: Reporting, recordkeeping, and disclosure requirements. The Paperwork Reduction Act Supporting Statement that corresponds with this final rule provides more information as to how these estimates were derived and further detail regarding the burden hours associated with each information collection. The first table presents burden hour estimates for financial institutions that report HMDA data to the Bureau, and the second table provides information for all HMDA reporters.

Table 1

Total Annual Burden, All Information Collections-Financial Institutions Reporting to the Bureau

	Number of Respondents	Total Burden per Respondent[1]	Total Burden (Rounded to Nearest Thousand)
Tier One: Annual Reporter	66	15,258 hours	1,007,000 hours
Tier One: Quarterly Reporter	18	16,666 hours	300,000 hours
Tier Two	39	1,974 hours	77,000 hours
Tier Three	22	182 hours	4,000 hours
Total	**145**	**NA**	**1,389,000 hours**

[1] The Bureau estimates that approximately 145 financial institutions will be required to report HMDA data for closed-end mortgage loans to the Bureau after implementation of the final rule. This is reflected in the column conveying the number of respondents (145 = 66+18+39+22). The Bureau estimates that 74 of these financial institutions will also be required to report data for open-end lines of credit. Specifically, 11 of the tier 3 institutions will be open-end reporters; 20 of the tier 2 institutions will be open-end reporters; 9 of the tier 1 quarterly reporting institutions will be open-end reporters; and 34 of the tier 1 annually reporting institutions will be open-end reporters. The estimates of total burden in the table include reporting of closed-end mortgage loans for all respondents indicated in the number of respondents column, plus reporting of open-end lines of credit for the subset of respondents that will also be required to report open-end lines of credit. The total burden per respondent in the table is total burden divided by number of respondents, and therefore does not reflect the specific burden hours for either respondents that report only closed-end mortgage loans or that report both closed-end mortgage loans and open-end lines of credit.

[560] The Bureau realizes that the impact to one-time costs varies by institution due to many factors, such as size, operational structure, and product complexity, and that this variance exists on a continuum that is impossible to fully capture. As a result, the one-time cost estimates will be high for some financial institutions and low for others.

Table 2
Total Annual Burden, All Information Collections- All Regulated Entities

	Lower Bound Estimate			Upper Bound Estimate		
	Number of Respondents	Total Burden per respondent[1]	Total Burden (Rounded to Nearest Thousand)	Number of Respondents	Total Burden per respondent[1]	Total Burden (Rounded to Nearest Thousand)
Tier One Annual Reporter	259	10,448 hours	2,706,000 hours	187	10,588 hours	1,980,000 hours
Tier One Quarterly Reporter	29	11,034 hours	320,000 hours	29	11,034 hours	320,000 hours
Tier Two	2,015	1,619 hours	3,262,000 hours	5,111	1,434 hours	7,330,000 hours
Tier Three	3,943	143 hours	563,000 hours	921	173 hours	159,000 hours
Total	**6,250**	**NA**	**6,851,000**	**6,250**	**NA**	**9,789,000**

Total Estimated Burden for all Respondents (Rounded to 100 Thousands): 8,300,000 hours[2]

[1] The Bureau estimates that approximately 6,250 financial institutions will be required to report HMDA data for closed-end mortgage loans to the CFPB after implementation of the final rule. This is reflected in the column conveying the number of respondents, where the total is rounded to the nearest 10. The Bureau estimates that 725 of these financial institutions will also be required to report data for open-end lines of credit, and that 24 additional financial institutions that are currently HMDA reporters will now report data only for open-end lines of credit. These 749 financial institutions consist of 273 tier 3 financial institutions, 463 tier 2 financial institutions, and 13 tier 1 financial institutions. The estimates of total burden in the table include reporting of closed-end mortgage loans for all respondents indicated in the number of respondents column, plus reporting of open-end lines of credit for the subset of respondents that will also be required to report open-end lines of credit. The total burden per respondent in the table is total burden divided by number of respondents, and therefore does not reflect the specific burden hours for either respondents that report only closed-end mortgage loans or that report both closed-end mortgage loans and open-end lines of credit.
[2] The Bureau estimates that, for all HMDA reporters, the burden hours will be approximately 6,851,000 to 9,789,000 hours per year. 8,300,000 is approximately the mid-point of this estimated range.

List of Subjects in 12 CFR Part 1003

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

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. Effective January 1, 2018, § 1003.1 is amended by revising paragraph (c) to read as follows:

§ 1003.1 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This part applies to financial institutions as defined in § 1003.2(g). This part requires a financial institution to submit data to the appropriate Federal agency for the financial institution as defined in § 1003.5(a)(4), and to disclose certain data to the public, about covered loans for which the financial institution receives applications, or that it originates or purchases, and that are secured by a dwelling located in a State of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico.

■ 3. Effective January 1, 2017, § 1003.2 is amended by revising paragraph (1)(iii) and adding paragraph (1)(v) to the definition of ''financial institution'' to read as follows:

§ 1003.2 Definitions.

* * * * *

Financial institution means:

(1) * * *

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one- to four-family dwelling;

* * * * *

(v) In each of the two preceding calendar years, originated at least 25 home purchase loans, including refinancings of home purchase loans, that are not excluded from this part pursuant to § 1003.4(d); and

* * * * *

■ 4. Effective January 1, 2018, § 1003.2 is revised to read as follows:

§ 1003.2 Definitions.

In this part:

(a) *Act* means the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), as amended.

(b) *Application*—(1) *In general.* Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) *Preapproval programs.* A request for preapproval for a home purchase loan, other than a home purchase loan that will be an open-end line of credit, a reverse mortgage, or secured by a multifamily dwelling, is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written

commitment may not be subject to conditions other than:

(i) Conditions that require the identification of a suitable property;

(ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and

(iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to a traditional home mortgage application.

(c) *Branch office* means:

(1) Any office of a bank, savings association, or credit union that is considered a branch by the Federal or State supervisory agency applicable to that institution, excluding automated teller machines and other free-standing electronic terminals; and

(2) Any office of a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that takes applications from the public for covered loans. A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) is also deemed to have a branch office in an MSA or in an MD, if, in the preceding calendar year, it received applications for, originated, or purchased five or more covered loans related to property located in that MSA or MD, respectively.

(d) *Closed-end mortgage loan* means an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under paragraph (o) of this section.

(e) *Covered loan* means a closed-end mortgage loan or an open-end line of credit that is not an excluded transaction under § 1003.3(c).

(f) *Dwelling* means a residential structure, whether or not attached to real property. The term includes but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community.

(g) *Financial institution* means a depository financial institution or a nondepository financial institution, where:

(1) *Depository financial institution* means a bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the Act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in an MSA;

(iii) In the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan, secured by a first lien on a one- to four-unit dwelling;

(iv) Meets one or more of the following two criteria:

(A) The institution is federally insured or regulated; or

(B) Any loan referred to in paragraph (g)(1)(iii) of this section was insured, guaranteed, or supplemented by a Federal agency, or was intended by the institution for sale to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(v) Meets at least one of the following criteria:

(A) 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

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10); and

(2) *Nondepository financial institution* means a for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) On the preceding December 31, had a home or branch office in an MSA; and

(ii) Meets at least one of the following criteria:

(A) 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

(B) In each of the two preceding calendar years, originated at least 100 open-end lines of credit that are not excluded from this part pursuant to § 1003.3(c)(1) through (10).

(h) [Reserved]

(i) *Home improvement loan* means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located.

(j) *Home purchase loan* means a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of purchasing a dwelling.

(k) *Loan/Application Register* means both the record of information required to be collected pursuant to § 1003.4 and the record submitted annually or quarterly, as applicable, pursuant to § 1003.5(a).

(l) *Manufactured home* means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2). For purposes of § 1003.4(a)(5), the term also includes a multifamily dwelling that is a manufactured home community.

(m) *Metropolitan Statistical Area* (*MSA)* and *Metropolitan Division* (*MD).*

(1) *Metropolitan Statistical Area* or *MSA* means a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget.

(2) *Metropolitan Division* (*MD)* means a Metropolitan Division of an MSA, as defined by the U.S. Office of Management and Budget.

(n) *Multifamily dwelling* means a dwelling, regardless of construction method, that contains five or more individual dwelling units.

(o) *Open-end line of credit* means an extension of credit that:

(1) Is secured by a lien on a dwelling; and

(2) Is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11).

(p) *Refinancing* means a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.

(q) *Reverse mortgage* means a closed-end mortgage loan or an open-end line of credit that is a reverse mortgage transaction as defined in Regulation Z, 12 CFR 1026.33(a), but without regard to whether the security interest is created in a principal dwelling.

■ 5. Effective January 1, 2018, § 1003.3 is amended by revising the heading and adding paragraph (c) to read as follows:

§ 1003.3 Exempt institutions and excluded transactions.

* * * * *

(c) *Excluded transactions.* The requirements of this part do not apply to:

(1) A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity;

(2) A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;

(3) Temporary financing;

(4) The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit;

(5) The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit;

(6) The purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 1003.2(c);

(7) A closed-end mortgage loan or open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than $500;

(8) The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;

(9) A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;

(10) A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p);

(11) A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans in each of the two preceding calendar years; or

(12) An open-end line of credit, if the financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years.

■ 6. Effective January 1, 2018, § 1003.4 is revised to read as follows:

§ 1003.4 Compilation of reportable data.

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for covered loans that it receives, covered loans that it originates, and covered loans that it purchases for each calendar year. A financial institution shall collect data regarding requests under a preapproval program, as defined in § 1003.2(b)(2), only if the preapproval request is denied, is approved by the financial institution but not accepted by the applicant, or results in the origination of a home purchase loan. The data collected shall include the following items:

(1)(i) A universal loan identifier (ULI) for the covered loan or application that can be used to identify and retrieve the covered loan or application file. Except for a purchased covered loan or application described in paragraphs (a)(1)(i)(D) and (E) of this section, the financial institution shall assign and report a ULI that:

(A) Begins with the financial institution's Legal Entity Identifier (LEI) that is issued by:

(*1*) A utility endorsed by the LEI Regulatory Oversight Committee; or

(*2*) A utility endorsed or otherwise governed by the Global LEI Foundation (GLEIF) (or any successor of the GLEIF) after the GLEIF assumes operational governance of the global LEI system.

(B) Follows the LEI with up to 23 additional 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 financial institution; and

(*3*) Must not include any information that could be used to directly identify the applicant or borrower; and

(C) Ends with a two-character check digit, as prescribed in appendix C to this part.

(D) For a purchased covered loan that any financial institution has previously assigned or reported with a ULI under this part, the financial institution that purchases the covered loan must use the ULI that was assigned or previously reported for the covered loan.

(E) For an application that was previously reported with a ULI under this part and that results in an origination during the same calendar year that is reported in a subsequent reporting period pursuant to § 1003.5(a)(1)(ii), the financial institution may report the same ULI for the origination that was previously reported for the application.

(ii) Except for purchased covered loans, the date the application was received or the date shown on the application form.

(2) Whether the covered loan is, or in the case of an application would have been, insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or guaranteed by the Rural Housing Service or the Farm Service Agency.

(3) Whether the covered loan is, or the application is for, a home purchase loan, a home improvement loan, a refinancing, a cash-out refinancing, or for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing.

(4) Whether the application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program.

(5) Whether the construction method for the dwelling related to the property identified in paragraph (a)(9) of this section is site-built or a manufactured home.

(6) Whether the property identified in paragraph (a)(9) of this section is or will be used by the applicant or borrower as a principal residence, as a second residence, or as an investment property.

(7) The amount of the covered loan or the amount applied for, as applicable.

(i) For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, the unpaid principal balance at the time of purchase or assumption.

(ii) For an open-end line of credit, other than a reverse mortgage open-end line of credit, the amount of credit available to the borrower under the terms of the plan.

(iii) For a reverse mortgage, the initial principal limit, as determined pursuant to section 255 of the National Housing Act (12 U.S.C. 1715z–20) and implementing regulations and mortgagee letters issued by the U.S. Department of Housing and Urban Development.

(8) The following information about the financial institution's action:

(i) The action taken by the financial institution, recorded as one of the following:

(A) Whether a covered loan was originated or purchased;

(B) Whether an application for a covered loan that did not result in the origination of a covered loan was approved but not accepted, denied, withdrawn by the applicant, or closed for incompleteness; and

(C) Whether a preapproval request that did not result in the origination of a home purchase loan was denied or approved but not accepted.

(ii) The date of the action taken by the financial institution.

(9) The following information about the location of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan:

(i) The property address; and

(ii) If the property is located in an MSA or MD in which the financial institution has a home or branch office, or if the institution is subject to paragraph (e) of this section, the location of the property by:

(A) State;

(B) County; and

(C) Census tract if the property is located in a county with a population of more than 30,000 according to the most recent decennial census conducted by the U.S. Census Bureau.

(10) The following information about the applicant or borrower:

(i) Ethnicity, race, and sex, and whether this information was collected on the basis of visual observation or surname;

(ii) Age; and

(iii) Except for covered loans or applications for which the credit decision did not consider or would not have considered income, the gross annual income relied on in making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application.

(11) The type of entity purchasing a covered loan that the financial institution originates or purchases and then sells within the same calendar year.

(12)(i) For covered loans subject to Regulation Z, 12 CFR part 1026, other than assumptions, purchased covered loans, and reverse mortgages, the difference between the covered loan's annual percentage rate and the average prime offer rate for a comparable transaction as of the date the interest rate is set.

(ii) ''Average prime offer rate'' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. The Bureau publishes average prime offer rates for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Bureau uses to derive these rates.

(13) For covered loans subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, whether the covered loan is a high-cost mortgage under Regulation Z, 12 CFR 1026.32(a).

(14) The lien status (first or subordinate lien) of the property identified under paragraph (a)(9) of this section.

(15)(i) Except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score.

(ii) For purposes of this paragraph (a)(15), ''credit score'' has the meaning set forth in 15 U.S.C. 1681g(f)(2)(A).

(16) The principal reason or reasons the financial institution denied the application, if applicable.

(17) For covered loans subject to Regulation Z, 12 CFR 1026.43(c), the following information:

(i) If a disclosure is provided for the covered loan pursuant to Regulation Z, 12 CFR 1026.19(f), the amount of total loan costs, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(4); or

(ii) If the covered loan is not subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), and is not a purchased covered loan, the total points and fees charged in connection with the covered loan, expressed in dollars and calculated pursuant to Regulation Z, 12 CFR 1026.32(b)(1).

(18) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the total of all itemized amounts that are designated borrower-paid at or before closing, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(19) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the points paid to the creditor to reduce the interest rate, expressed in dollars, as described in Regulation Z, 12 CFR 1026.37(f)(1)(i), and disclosed pursuant to Regulation Z, 12 CFR 1026.38(f)(1).

(20) For covered loans subject to the disclosure requirements in Regulation Z, 12 CFR 1026.19(f), the amount of lender credits, as disclosed pursuant to Regulation Z, 12 CFR 1026.38(h)(3).

(21) The interest rate applicable to the approved application, or to the covered loan at closing or account opening.

(22) For covered loans or applications subject to Regulation Z, 12 CFR part 1026, other than reverse mortgages or purchased covered loans, the term in months of any prepayment penalty, as defined in Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii), as applicable.

(23) Except for purchased covered loans, the ratio of the applicant's or borrower's total monthly debt to the total monthly income relied on in making the credit decision.

(24) Except for purchased covered loans, the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision.

(25) The scheduled number of months after which the legal obligation will mature or terminate or would have matured or terminated.

(26) The number of months, or proposed number of months in the case of an application, until the first date the interest rate may change after closing or account opening.

(27) Whether the contractual terms include or would have included any of the following:

(i) A balloon payment as defined in Regulation Z, 12 CFR 1026.18(s)(5)(i);

(ii) Interest-only payments as defined in Regulation Z, 12 CFR 1026.18(s)(7)(iv);

(iii) A contractual term that would cause the covered loan to be a negative amortization loan as defined in Regulation Z, 12 CFR 1026.18(s)(7)(v); or

(iv) Any other contractual term that would allow for payments other than fully amortizing payments, as defined in Regulation Z, 12 CFR 1026.43(b)(2), during the loan term, other than the contractual terms described in this paragraph (a)(27)(i), (ii), and (iii).

(28) The value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan relied on in making the credit decision.

(29) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home and not a multifamily dwelling, whether the covered loan is, or in the case of an application would have been, secured by a manufactured home and land, or by a manufactured home and not land.

(30) If the dwelling related to the property identified in paragraph (a)(9) of this section is a manufactured home and not a multifamily dwelling, whether the applicant or borrower:

(i) Owns the land on which it is or will be located or, in the case of an application, did or would have owned the land on which it would have been located, through a direct or indirect ownership interest; or

(ii) Leases or, in the case of an application, leases or would have leased the land through a paid or unpaid leasehold.

(31) The number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan.

(32) If the property securing the covered loan or, in the case of an application, proposed to secure the covered loan includes a multifamily dwelling, the number of individual dwelling units related to the property that are income-restricted pursuant to Federal, State, or local affordable housing programs.

(33) Except for purchased covered loans, the following information about the application channel of the covered loan or application:

(i) Whether the applicant or borrower submitted the application for the covered loan directly to the financial institution; and

(ii) Whether the obligation arising from the covered loan was, or in the case of an application, would have been initially payable to the financial institution.

(34) For a covered loan or application, the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry for the mortgage loan

originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable.

(35)(i) Except for purchased covered loans, the name of the automated underwriting system used by the financial institution to evaluate the application and the result generated by that automated underwriting system.

(ii) For purposes of this paragraph (a)(35), an ''automated underwriting system'' means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor that provides a result regarding the credit risk of the applicant and whether the covered loan is eligible to be originated, purchased, insured, or guaranteed by that securitizer, Federal government insurer, or Federal government guarantor.

(36) Whether the covered loan is, or the application is for, a reverse mortgage.

(37) Whether the covered loan is, or the application is for, an open-end line of credit.

(38) Whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose.

(b) *Collection of data on ethnicity, race, sex, age, and income.* (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in appendix B to this part.

(2) Ethnicity, race, sex, age, and income data may but need not be collected for covered loans purchased by a financial institution.

(c)–(d) [Reserved]

(e) *Data reporting for banks and savings associations that are required to report data on small business, small farm, and community development lending under CRA.* Banks and savings associations that are required to report data on small business, small farm, and community development lending under regulations that implement the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) shall also collect the information required by paragraph 4(a)(9) of this section for property located outside MSAs and MDs in which the institution has a home or branch office, or outside any MSA.

(f) *Quarterly recording of data.* A financial institution shall record the data collected pursuant to this section on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a covered loan, sale of a covered loan in the same calendar year it is originated or purchased, or denial or withdrawal of an application).

■ 7. Effective January 1, 2018, § 1003.5 is amended by revising paragraphs (b) through (f) to read as follows:

§ 1003.5 Disclosure and reporting.

* * * * *

(b) *Disclosure statement.* (1) The Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year pursuant to paragraph (a) of this section.

(2) No later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's disclosure statement may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(c) *Modified loan/application register.* (1) A financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's loan/application register, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(2) A financial institution shall make available the notice required by paragraph (c)(1) of this section following the calendar year for which the data are collected.

(d) *Availability of written notices.* (1) A financial institution shall make the notice required by paragraph (c) of this section available to the public for a period of three years and the notice required by paragraph (b)(2) of this section available to the public for a period of five years. An institution shall make these notices available during the hours the office is normally open to the public for business.

(2) A financial institution may make available to the public, at its discretion and in addition to the written notices required by paragraphs (b)(2) or (c)(1) of this section, as applicable, its disclosure statement or its loan/application register, as modified by the Bureau to protect applicant and borrower privacy. A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing these data.

(e) *Posted notice of availability of data.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each MSA and each MD. This notice must clearly convey that the institution's HMDA data is available on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(f) *Aggregated data.* Using data submitted by financial institutions pursuant to paragraph (a) of this section, the FFIEC will make available aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race.

■ 8. Effective January 1, 2019, § 1003.5 is revised to read as follows:

§ 1003.5 Disclosure and reporting.

(a) *Reporting to agency.* (1)(i) *Annual reporting.* By March 1 following the calendar year for which data are collected and recorded as required by § 1003.4, a financial institution shall submit its annual loan/application register in electronic format to the appropriate Federal agency at the address identified by such agency. An authorized representative of the financial institution with knowledge of the data submitted shall certify to the accuracy and completeness of data submitted pursuant to this paragraph (a)(1)(i). The financial institution shall retain a copy of its annual loan/application register submitted pursuant to this paragraph (a)(1)(i) for its records for at least three years.

(ii) [Reserved]

(iii) When the last day for submission of data prescribed under this paragraph (a)(1) falls on a Saturday or Sunday, a submission shall be considered timely if it is submitted on the next succeeding Monday.

(2) A financial institution that is a subsidiary of a bank or savings association shall complete a separate loan/application register. The subsidiary shall submit the loan/application register, directly or through its parent, to the appropriate Federal agency for the subsidiary's parent at the address identified by the agency.

(3) A financial institution shall provide with its submission:

(i) Its name;

(ii) The calendar year the data submission covers pursuant to paragraph (a)(1)(i) of this section or calendar quarter and year the data submission covers pursuant to paragraph (a)(1)(ii) of this section;

(iii) The name and contact information of a person who may be contacted with questions about the institution's submission;

(iv) Its appropriate Federal agency;

(v) The total number of entries contained in the submission;

(vi) Its Federal Taxpayer Identification number; and

(vii) Its Legal Entity Identifier (LEI) as described in § 1003.4(a)(1)(i)(A).

(4) For purposes of paragraph (a) of this section, ''appropriate Federal agency'' means the appropriate agency for the financial institution as determined pursuant to section 304(h)(2) of the Home Mortgage Disclosure Act (12 U.S.C. 2803(h)(2)) or, with respect to a financial institution subject to the Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), the Bureau.

(5) Procedures for the submission of data pursuant to paragraph (a) of this section are available at *www.consumerfinance.gov/hmda*.

(b) *Disclosure statement.* (1) The Federal Financial Institutions Examination Council (FFIEC) will make available a disclosure statement based on the data each financial institution submits for the preceding calendar year pursuant to paragraph (a)(1)(i) of this section.

(2) No later than three business days after receiving notice from the FFIEC that a financial institution's disclosure statement is available, the financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's disclosure statement may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(c) *Modified loan/application register.* (1) A financial institution shall make available to the public upon request at its home office, and each branch office physically located in each MSA and each MD, a written notice that clearly conveys that the institution's loan/application register, as modified by the Bureau to protect applicant and borrower privacy, may be obtained on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(2) A financial institution shall make available the notice required by paragraph (c)(1) of this section following the calendar year for which the data are collected.

(d) *Availability of written notices.* (1) A financial institution shall make the notice required by paragraph (c) of this section available to the public for a period of three years and the notice required by paragraph (b)(2) of this section available to the public for a period of five years. An institution shall make these notices available during the hours the office is normally open to the public for business.

(2) A financial institution may make available to the public, at its discretion and in addition to the written notices required by paragraphs (b)(2) or (c)(1) of this section, as applicable, its disclosure statement or its loan/application register, as modified by the Bureau to protect applicant and borrower privacy. A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing these data.

(e) *Posted notice of availability of data.* A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office physically located in each MSA and each MD. This notice must clearly convey that the institution's HMDA data is available on the Bureau's Web site at *www.consumerfinance.gov/hmda*.

(f) *Aggregated data.* Using data submitted by financial institutions pursuant to paragraph (a)(1)(i) of this section, the FFIEC will make available aggregate data for each MSA and MD, showing lending patterns by property location, age of housing stock, and income level, sex, ethnicity, and race.

■ 9. Effective January 1, 2020, § 1003.5 is amended by adding paragraph (a)(1)(ii) to read as follows:

§ 1003.5 Disclosure and reporting.

(a) * * *

(1) * * *

(ii) *Quarterly reporting.* Within 60 calendar days after the end of each calendar quarter except the fourth quarter, a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, shall submit to the appropriate Federal agency its loan/application register containing all data required to be recorded for that quarter pursuant to § 1003.4(f). The financial institution shall submit its quarterly loan/application register pursuant to this paragraph (a)(1)(ii) in electronic format at the address identified by the appropriate Federal agency for the institution.

* * * * *

■ 10. Effective January 1, 2019, § 1003.6 is revised to read as follows:

§ 1003.6 Enforcement.

(a) *Administrative enforcement.* A violation of the Act or this part is subject to administrative sanctions as provided in section 305 of the Act (12 U.S.C. 2804), including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in section 305 of the Act.

(b) *Bona fide errors.* (1) An error in compiling or recording data for a covered loan or application is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error.

(2) An incorrect entry for a census tract number is deemed a bona fide error, and is not a violation of the Act or this part, provided that the financial institution maintains procedures reasonably adapted to avoid such an error.

(c) *Quarterly recording and reporting.* (1) If a financial institution makes a good-faith effort to record all data required to be recorded pursuant to § 1003.4(f) fully and accurately within 30 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i).

(2) If a financial institution required to comply with § 1003.5(a)(1)(ii) makes a good-faith effort to report all data required to be reported pursuant to § 1003.5(a)(1)(ii) fully and accurately within 60 calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the inaccuracy or omission is not a violation of the Act or this part provided that the institution corrects or completes the data prior to submitting its annual loan/application register pursuant to § 1003.5(a)(1)(i).

■ 11. Effective January 1, 2018, in Appendix A to Part 1003:

■ a. New subheading *Transition Requirements for Data Collected in 2017 and Submitted in 2018* and paragraph 1 under that subheading are added immediately after the ''Paperwork Reduction Act Notice'' paragraph.

■ b. Paragraphs II.A and B are revised, and paragraph II.C is added.

The additions and revisions read as follows:

Appendix A to Part 1003—Form and Instructions for Completion of HMDA Loan/Application Register

Paperwork Reduction Act Notice

* * * * *

Transition Requirements for Data Collected in 2017 and Submitted in 2018

1. The instructions for completion of the loan/application register in part I of this appendix applies to data collected during the 2017 calendar year and reported in 2018. Part I of this appendix does not apply to data

collected pursuant to the amendments to Regulation C effective January 1, 2018.

* * * * *

II. Appropriate Federal Agencies for HMDA Reporting

A. A financial institution shall submit its loan/application register in electronic format to the appropriate Federal agency at the address identified by such agency. The appropriate Federal agency for a financial institution is determined pursuant to section 304(h)(2) of the Home Mortgage Disclosure Act (12 U.S.C. 2803(h)(2)) or, with respect to a financial institution subject to the Bureau's supervisory authority under section 1025(a) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5515(a)), is the Bureau.

B. Procedures for the submission of the loan/application register are available at *www.consumerfinance.gov/hmda*.

C. An authorized representative of the financial institution with knowledge of the data submitted shall certify to the accuracy and completeness of the data submitted.

* * * * *

Appendix A to Part 1003—[Removed and Reserved]

■ 12. Effective January 1, 2019, Appendix A to Part 1003 is removed and reserved.

■ 13. Effective January 1, 2018, Appendix B to Part 1003 is revised to read as follows:

Appendix B to Part 1003—Form and Instructions for Data Collection on Ethnicity, Race, and Sex

You may list questions regarding the ethnicity, race, and sex of the applicant on your loan application form, or on a separate form that refers to the application. (See the sample data collection form below for model language.)

1. You must ask the applicant for this information (but you cannot require the applicant to provide it) whether the application is taken in person, by mail or telephone, or on the internet. For applications taken by telephone, you must state the information in the collection form orally, except for that information which pertains uniquely to applications taken in writing, for example, the italicized language in the sample data collection form.

2. Inform the applicant that Federal law requires this information to be collected in order to protect consumers and to monitor compliance with Federal statutes that prohibit discrimination against applicants on these bases. Inform the applicant that if the information is not provided where the application is taken in person, you are required to note the information on the basis of visual observation or surname.

3. If you accept an application through electronic media with a video component, you must treat the application as taken in person. If you accept an application through electronic media without a video component (for example, facsimile), you must treat the application as accepted by mail.

4. For purposes of § 1003.4(a)(10)(i), if a covered loan or application includes a guarantor, you do not report the guarantor's ethnicity, race, and sex.

5. If there are no co-applicants, you must report that there is no co-applicant. If there is more than one co-applicant, you must provide the ethnicity, race, and sex only for the first co-applicant listed on the collection form. A co-applicant may provide an absent co-applicant's ethnicity, race, and sex on behalf of the absent co-applicant. If the information is not provided for an absent co-applicant, you must report ''information not provided by applicant in mail, internet, or telephone application'' for the absent co-applicant.

6. When you purchase a covered loan and you choose not to report the applicant's or co-applicant's ethnicity, race, and sex, you must report that the requirement is not applicable.

7. You must report that the requirement to report the applicant's or co-applicant's ethnicity, race, and sex is not applicable when the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, you must report that the requirement to report the applicant's ethnicity, race, and sex is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, you must report the applicant's ethnicity, race, and sex.

8. You must report the ethnicity, race, and sex of an applicant as provided by the applicant. For example, if an applicant selects the ''Mexican'' box the institution reports ''Mexican'' for the ethnicity of the applicant. If an applicant selects the ''Asian'' box the institution reports ''Asian'' for the race of the applicant. Only an applicant may self-identify as being of a particular Hispanic or Latino subcategory (Mexican, Puerto Rican, Cuban, Other Hispanic or Latino) or of a particular Asian subcategory (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Other Asian) or of a particular Native Hawaiian or Other Pacific Islander subcategory (Native Hawaiian, Guamanian or Chamorro, Samoan, Other Pacific Islander) or of a particular American Indian or Alaska Native enrolled or principal tribe.

9. You must offer the applicant the option of selecting more than one ethnicity or race. If an applicant selects more than one ethnicity or race, you must report each selected designation, subject to the limits described below.

i. *Ethnicity—Aggregate categories and subcategories.* There are two aggregate ethnicity categories: Hispanic or Latino; and Not Hispanic or Latino. If an applicant selects Hispanic or Latino, the applicant may also select up to four ethnicity subcategories: Mexican; Puerto Rican; Cuban; and Other Hispanic or Latino. You must report each aggregate ethnicity category and each ethnicity subcategory selected by the applicant.

ii. *Ethnicity—Other subcategories.* If an applicant selects the Other Hispanic or Latino ethnicity subcategory, the applicant may also provide a particular Hispanic or Latino ethnicity not listed in the standard subcategories. In such a case, you must report both the selection of Other Hispanic or Latino and the additional information provided by the applicant.

iii. *Race—Aggregate categories and subcategories.* There are five aggregate race categories: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; and White. The Asian and the Native Hawaiian or Other Pacific Islander aggregate categories have seven and four subcategories, respectively. The Asian race subcategories are: Asian Indian; Chinese, Filipino; Japanese; Korean; Vietnamese; and Other Asian. The Native Hawaiian or Other Pacific Islander race subcategories are: Native Hawaiian; Guamanian or Chamorro; Samoan; and Other Pacific Islander. You must report every aggregate race category selected by the applicant. If the applicant also selects one or more race subcategories, you must report each race subcategory selected by the applicant, except that you must not report more than a total of five aggregate race categories and race subcategories combined. For example, if the applicant selects all five aggregate race categories and also selects some race subcategories, you report only the five aggregate race categories. On the other hand, if the applicant selects the White, Asian, and Native Hawaiian or Other Pacific Islander aggregate race categories, and the applicant also selects the Korean, Vietnamese, and Samoan race subcategories, you must report White, Asian, Native Hawaiian or Other Pacific Islander, and any two, at your option, of the three race subcategories selected by the applicant. In this example, you must report White, Asian, and Native Hawaiian or Other Pacific Islander, and in addition you must report (at your option) either Korean and Vietnamese, Korean and Samoan, or Vietnamese and Samoan. To determine how to report an Other race subcategory for purposes of the five-race maximum, see paragraph 9.iv below.

iv. *Race—Other subcategories.* If an applicant selects the Other Asian race subcategory or the Other Pacific Islander race subcategory, the applicant may also provide a particular Other Asian or Other Pacific Islander race not listed in the standard subcategories. In either such case, you must report both the selection of Other Asian or Other Pacific Islander, as applicable, and the additional information provided by the applicant, subject to the five-race maximum. In all such cases where the applicant has selected an Other race subcategory and also provided additional information, for purposes of the maximum of five reportable race categories and race subcategories combined set forth above, the Other race subcategory and additional information provided by the applicant together constitute only one selection. Thus, using the same facts in the example offered in paragraph 9.iii above, if the applicant also selected Other Asian and entered ''Thai'' in the space provided, Other Asian and Thai are considered one selection. You must report any two (at your option) of the four race subcategories selected by the applicant, Korean, Vietnamese, Other Asian-Thai, and

Samoan, in addition to the three aggregate race categories selected by the applicant.

10. If the applicant chooses not to provide the information for an application taken in person, note this fact on the collection form and then collect the applicant's ethnicity, race, and sex on the basis of visual observation or surname. You must report whether the applicant's ethnicity, race, and sex was collected on the basis of visual observation or surname. When you collect an applicant's ethnicity, race, and sex on the basis of visual observation or surname, you must select from the following aggregate categories: Ethnicity (Hispanic or Latino; not Hispanic or Latino); race (American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White); sex (male; female).

11. If the applicant declines to answer these questions by checking the ''I do not wish to provide this information'' box on an application that is taken by mail or on the internet, or declines to provide this information by stating orally that he or she does not wish to provide this information on an application that is taken by telephone, you must report ''information not provided by applicant in mail, internet, or telephone application.''

12. If the applicant begins an application by mail, internet, or telephone, and does not provide the requested information on the application but does not check or select the ''I do not wish to provide this information'' box on the application, and the applicant meets in person with you to complete the application, you must request the applicant's ethnicity, race, and sex. If the applicant does not provide the requested information during the in-person meeting, you must collect the information on the basis of visual observation or surname. If the meeting occurs after the application process is complete, for example, at closing or account opening, you are not required to obtain the applicant's ethnicity, race, and sex.

13. When an applicant provides the requested information for some but not all fields, you report the information that was provided by the applicant, whether partial or complete. If an applicant provides partial or complete information on ethnicity, race, and sex and also checks the ''I do not wish to provide this information'' box on an application that is taken by mail or on the internet, or makes that selection when applying by telephone, you must report the information on ethnicity, race, and sex that was provided by the applicant.

SAMPLE DATA COLLECTION FORM
DEMOGRAPHIC INFORMATION OF APPLICANT AND CO-APPLICANT

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, race, and sex) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more "Hispanic or Latino" origins, and one or more designations for "Race."

The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to provide some or all of this information, please check below.

Applicant:

Ethnicity:
☐ Hispanic or Latino – *Check one or more*
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

Co-Applicant:

Ethnicity:
☐ Hispanic or Latino
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race:
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

To Be Completed by Financial Institution (for an application taken in person):

Was the ethnicity of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the ethnicity of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

■ 14. Effective January 1, 2018, Appendix C to Part 1003 is added to read as follows:

Appendix C to Part 1003—Procedures for Generating a Check Digit and Validating a ULI

The check digit for the Universal Loan Identifier (ULI) pursuant to § 1003.4(a)(1)(i)(C) is calculated using the ISO/IEC 7064, MOD 97–10 as it appears on the International Standard ISO/IEC 7064:2003, which is published by the International Organization for Standardization (ISO).

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Generating A Check Digit

Step 1: Starting with the leftmost character in the string that consists of the combination of the Legal Entity Identifier (LEI) pursuant to § 1003.4(a)(1)(i)(A) and the additional characters identifying the covered loan or application pursuant to § 1003.4(a)(1)(i)(B), replace each alphabetic character with numbers in accordance with Table I below to obtain all numeric values in the string.

Table I—Alphabetic To Numeric Conversion Table

The alphabetic characters are not case-sensitive and each letter, whether it is capitalized or in lower-case, is equal to the same value as each letter illustrates in the conversion table. For example, A and a are each equal to 10.

A = 10	H = 17	O = 24	V = 31
B = 11	I = 18	P = 25	W = 32
C = 12	J = 19	Q = 26	X = 33
D = 13	K = 20	R = 27	Y = 34
E = 14	L = 21	S = 28	Z = 35
F = 15	M = 22	T = 29	
G = 16	N = 23	U = 30	

Step 2: After converting the combined string of characters to all numeric values, append two zeros to the rightmost positions.

Step 3: Apply the mathematical function mod=(*n*,97) where *n*= the number obtained in step 2 above and 97 is the divisor.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. Truncate the remainder to three digits and multiply it by .97. Round the result to the nearest whole number.

Step 4: Subtract the result in step 3 from 98. If the result is one digit, add a leading 0 to make it two digits.

Step 5: The two digits in the result from step 4 is the check digit. Append the resulting check digit to the rightmost position in the combined string of characters described in step 1 above to generate the ULI.

Example

For example, assume the LEI for a financial institution is 10Bx939c5543TqA1144M and the financial institution assigned the following string of characters to identify the covered loan: 999143X. The combined string of characters is 10Bx939c5543TqA1144M 999143X.

Step 1: Starting with the leftmost character in the combined string of characters, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 101133939125543292610114422999143 33.

Step 2: Append two zeros to the rightmost positions in the combined string. The result is 10113393912554329261011442299914 3300.

Step 3: Apply the mathematical function mod=(*n*,97) where *n*= the number obtained in step 2 above and 97 is the divisor. The result is 60.

Alternatively, to calculate without using the modulus operator, divide the numbers in step 2 above by 97. The result is 1042617929 12931229494633226795292 0.6185567010 30928. Truncate the remainder to three digits, which is .618, and multiply it by .97. The result is 59.946. Round this result to the nearest whole number, which is 60.

Step 4: Subtract the result in step 3 from 98. The result is 38.

Step 5: The two digits in the result from step 4 is the check digit. Append the check digit to the rightmost positions in the combined string of characters that consists of the LEI and the string of characters assigned by the financial institution to identify the covered loan to obtain the ULI. In this example, the ULI would be 10Bx939c55 43TqA1144M999143X38.

Validating A ULI

To determine whether the ULI contains a transcription error using the check digit calculation, the procedures are described below.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string.

Step 2: Apply the mathematical function mod=(*n*,97) where *n*=the number obtained in step 1 above and 97 is the divisor.

Step 3: If the result is 1, the ULI does not contain transcription errors.

Example

For example, the ULI assigned to a covered loan is 10Bx939c5543TqA1144M999143X38.

Step 1: Starting with the leftmost character in the ULI, replace each alphabetic character with numbers in accordance with Table I above to obtain all numeric values in the string. The result is 10113393912554329261 01144229991433338.

Step 2: Apply the mathematical function mod=(*n*,97) where *n* is the number obtained in step 1 above and 97 is the divisor.

Step 3: The result is 1. The ULI does not contain transcription errors.

■ 15. Effective January 1, 2018, Supplement I to Part 1003 is revised to read as follows:

Supplement I to Part 1003—Official Interpretations

Introduction

1. *Status.* The commentary in this supplement is the vehicle by which the Bureau of Consumer Financial Protection issues formal interpretations of Regulation C (12 CFR part 1003).

Section 1003.2—Definitions

2(b) Application

1. *Consistency with Regulation B.* Bureau interpretations that appear in the official commentary to Regulation B (Equal Credit Opportunity Act, 12 CFR part 1002, Supplement I) are generally applicable to the definition of application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. *Prequalification.* A prequalification request is a request by a prospective loan applicant (other than a request for preapproval) for a preliminary determination on whether the prospective loan applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. Some institutions evaluate prequalification requests through a procedure that is separate from the institution's normal loan application process; others use the same process. In either case, Regulation C does not require an institution to report prequalification requests on the loan/application register, even though these requests may constitute applications under Regulation B for purposes of adverse action notices.

3. *Requests for preapproval.* To be a preapproval program as defined in § 1003.2(b)(2), the written commitment issued under the program must result from a comprehensive review of the creditworthiness of the applicant, including such verification of income, resources, and other matters as is typically done by the institution as part of its normal credit evaluation program. In addition to conditions involving the identification of a suitable property and verification that no material change has occurred in the applicant's financial condition or creditworthiness, the written commitment may be subject only to other conditions (unrelated to the financial condition or creditworthiness of the applicant) that the lender ordinarily attaches to a traditional home mortgage application approval. These conditions are limited to conditions such as requiring an acceptable title insurance binder or a certificate indicating clear termite inspection, and, in the case where the applicant plans to use the proceeds from the sale of the applicant's present home to purchase a new home, a settlement statement showing adequate proceeds from the sale of the present home. Regardless of its name, a program that satisfies the definition of a preapproval program in § 1003.2(b)(2) is a preapproval program for purposes of Regulation C. Conversely, a program that a financial institution describes as a ''preapproval program'' that does not satisfy the requirements of § 1003.2(b)(2) is not a preapproval program for purposes of Regulation C. If a financial institution does not regularly use the procedures specified in § 1003.2(b)(2), but instead considers requests for preapprovals on an ad hoc basis, the financial institution need not treat ad hoc requests as part of a preapproval program for purposes of Regulation C. A financial institution should, however, be generally consistent in following uniform procedures for considering such ad hoc requests.

2(c) Branch Office

Paragraph 2(c)(1)

1. *Credit unions.* For purposes of Regulation C, a ''branch'' of a credit union is any office where member accounts are established or loans are made, whether or not the office has been approved as a branch by a Federal or State agency. (See 12 U.S.C. 1752.)

2. *Bank, savings association, or credit unions.* A branch office of a bank, savings

association, or credit union does not include a loan-production office if the loan-production office is not considered a branch by the Federal or State supervisory authority applicable to that institution. A branch office also does not include the office of an affiliate or of a third party, such as a third-party broker.

Paragraph 2(c)(2)

1. General. A branch office of a for-profit mortgage lending institution, other than a bank savings association or credit union, does not include the office of an affiliate or of a third party, such as a third-party broker.

2(d) Closed-end Mortgage Loan

1. *Dwelling-secured.* Section 1003.2(d) defines a closed-end mortgage loan as an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under § 1003.2(o). Thus, for example, a loan to purchase a dwelling and secured only by a personal guarantee is not a closed-end mortgage loan because it is not dwelling-secured.

2. *Extension of credit.* Under § 1003.2(d), a dwelling-secured loan is not a closed-end mortgage loan unless it involves an extension of credit. Thus, some transactions completed pursuant to installment sales contracts, such as some land contracts, are not closed-end mortgage loans because no credit is extended. For example, if a land contract provides that, upon default, the contract terminates, all previous payments will be treated as rent, and the borrower is under no obligation to make further payments, the transaction is not a closed-end mortgage loan. In general, extension of credit under § 1003.2(d) refers to the granting of credit only pursuant to a new debt obligation. Thus, except as described in comments 2(d)–2.i and .ii, if a transaction modifies, renews, extends, or amends the terms of an existing debt obligation, but the existing debt obligation is not satisfied and replaced, the transaction is not a closed-end mortgage loan under § 1003.2(d) because there has been no new extension of credit. The phrase extension of credit thus is defined differently under Regulation C than under Regulation B, 12 CFR part 1002.

i. *Assumptions.* For purposes of Regulation C, an assumption is a transaction in which an institution enters into a written agreement accepting a new borrower in place of an existing borrower as the obligor on an existing debt obligation. For purposes of Regulation C, assumptions include successor-in-interest transactions, in which an individual succeeds the prior owner as the property owner and then assumes the existing debt secured by the property. Under § 1003.2(d), assumptions are extensions of credit even if the new borrower merely assumes the existing debt obligation and no new debt obligation is created. *See also* comment 2(j)–5.

ii. *New York State consolidation, extension, and modification agreements.* A transaction completed pursuant to a New York State consolidation, extension, and modification agreement and classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an extension of credit under § 1003.2(d). Comments 2(i)–1, 2(j)–5, and 2(p)–2 clarify whether such transactions are home improvement loans, home purchase loans, or refinancings, respectively.

2(f) Dwelling

1. *General.* The definition of a dwelling is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and investment properties.

2. *Multifamily residential structures and communities.* A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of § 1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. However, a loan related to a multifamily residential structure or community that is not a manufactured home community is not secured by a dwelling for purposes of § 1003.2(f) if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues.

3. *Exclusions.* Recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of § 1003.2(f), regardless of whether they are used as residences. Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are also excluded, regardless of whether they are used as residences. Also excluded are transitory residences such as hotels, hospitals, college dormitories, and recreational vehicle parks, and structures originally designed as dwellings but used exclusively for commercial purposes, such as homes converted to daycare facilities or professional offices.

4. *Mixed-use properties.* A property used for both residential and commercial purposes, such as a building containing apartment units and retail space, is a dwelling if the property's primary use is residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.

5. *Properties with service and medical components.* For purposes of § 1003.2(f), a property used for both long-term housing and to provide related services, such as assisted living for senior citizens or supportive housing for persons with disabilities, is a dwelling and does not have a non-residential purpose merely because the property is used for both housing and to provide services. However, transitory residences that are used to provide such services are not dwellings. *See* comment 2(f)–3. Properties that are used to provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, also are not dwellings. *See* comment 2(f)–3. If a property that is used for both long-term housing and to provide related services also is used to provide medical care, the property is a dwelling if its primary use is residential. An institution may use any reasonable standard to determine the property's primary use, such as by square footage, income generated, or number of beds or units allocated for each use. An institution may select the standard to apply on a case-by-case basis.

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. [Reserved]

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 100 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 100 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).

2(i) Home Improvement Loan

1. *General.* Section 1003.2(i) defines a home improvement loan as a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located. For example, a closed-end mortgage loan obtained to repair a dwelling by replacing a roof is a home improvement loan under § 1003.2(i). A loan or line of credit is a home improvement loan even if only a part of the purpose is for repairing, rehabilitating, remodeling, or improving a dwelling. For example, an open-end line of credit obtained in part to remodel a kitchen and in part to pay college tuition is a home improvement loan under § 1003.2(i). Similarly, for example, a loan that is completed pursuant to a New York State consolidation, extension, and modification agreement and that is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is a home improvement loan if any of the loan's funds are for home improvement purposes. *See also* comment 2(d)–2.ii.

2. *Improvements to real property.* Home improvements include improvements both to a dwelling and to the real property on which the dwelling is located (for example, installation of a swimming pool, construction of a garage, or landscaping).

3. *Commercial and other loans.* A home improvement loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to improve an apartment building originated in the commercial loan department.

4. *Mixed-use property.* A closed-end mortgage loan or an open-end line of credit to improve a dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space), or the real property on which such a dwelling is located, is a home improvement loan if the loan's proceeds are used either to improve the entire property (for example, to replace the heating system), or if the proceeds are used primarily to improve the residential portion of the property. An institution may use any reasonable standard to determine the primary use of the loan proceeds. An institution may select the standard to apply on a case-by-case basis.

5. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home improvement loan under § 1003.2(i) may also be a refinancing under § 1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to improve a home. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

6. *Statement of borrower.* In determining whether a closed-end mortgage loan or an open-end line of credit, or an application for a closed-end mortgage loan or an open-end line of credit, is for home improvement purposes, an institution may rely on the applicant's or borrower's stated purpose(s) for the loan or line of credit at the time the application is received or the credit decision is made. An institution need not confirm that the borrower actually uses any of the funds for the stated purpose(s).

2(j) Home Purchase Loan

1. *Multiple properties.* A home purchase loan includes a closed-end mortgage loan or an open-end line of credit secured by one dwelling and used to purchase another dwelling. For example, if a person obtains a home-equity loan or a reverse mortgage secured by dwelling A to purchase dwelling B, the home-equity loan or the reverse mortgage is a home purchase loan under § 1003.2(j).

2. *Commercial and other loans.* A home purchase loan may include a closed-end mortgage loan or an open-end line of credit originated outside an institution's residential mortgage lending division, such as a loan or line of credit to purchase an apartment building originated in the commercial loan department.

3. *Construction and permanent financing.* A home purchase loan includes both a combined construction/permanent loan and the permanent financing that replaces a construction-only loan. A home purchase loan does not include a construction-only loan that is designed to be replaced by permanent financing at a later time, which is excluded from Regulation C as temporary financing under § 1003.3(c)(3). Comment 3(c)(3)–1 provides additional details about transactions that are excluded as temporary financing.

4. *Second mortgages that finance the downpayments on first mortgages.* If an institution making a first mortgage loan to a home purchaser also makes a second mortgage loan or line of credit to the same purchaser to finance part or all of the home purchaser's downpayment, both the first mortgage loan and the second mortgage loan or line of credit are home purchase loans.

5. *Assumptions.* Under § 1003.2(j), an assumption is a home purchase loan when an institution enters into a written agreement accepting a new borrower as the obligor on an existing obligation to finance the new borrower's purchase of the dwelling securing the existing obligation, if the resulting obligation is a closed-end mortgage loan or an open-end line of credit. A transaction in

which borrower B finances the purchase of borrower A's dwelling by assuming borrower A's existing debt obligation and that is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under New York Tax Law section 255, such that the borrower owes reduced or no mortgage recording taxes, is an assumption and a home purchase loan. *See* comment 2(d)–2.ii. On the other hand, a transaction in which borrower B, a successor-in-interest, assumes borrower A's existing debt obligation only after acquiring title to borrower A's dwelling is not a home purchase loan because borrower B did not assume the debt obligation for the purpose of purchasing a dwelling. *See* § 1003.4(a)(3) and comment 4(a)(3)–4 for guidance about how to report covered loans that are not home improvement loans, home purchase loans, or refinancings.

6. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a home purchase loan under § 1003.2(j) may also be a home improvement loan under § 1003.2(i) and a refinancing under § 1003.2(p) if the transaction is a cash-out refinancing and the funds will be used to purchase and improve a dwelling. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

2(l) Manufactured Home

1. *Definition of a manufactured home.* The definition in § 1003.2(l) refers to the Federal building code for manufactured housing established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR part 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1003.2(l). Recreational vehicles are excluded from the HUD code standards pursuant to 24 CFR 3282.8(g) and are also excluded from the definition of dwelling for purposes of § 1003.2(f). *See* comment 2(f)–3.

2. *Identification.* A manufactured home will generally bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location noting its compliance with the Federal Manufactured Home Construction and Safety Standards in force at the time of manufacture and providing other information about its manufacture pursuant to 24 CFR 3280.5. A manufactured home will generally also bear a HUD Certification Label pursuant to 24 CFR 3280.11.

2(m) Metropolitan Statistical Area (MD) or Metropolitan Division (MD).

1. *Use of terms ''Metropolitan Statistical Area (MSA)'' and ''Metropolitan Division (MD).''* The U.S. Office of Management and Budget (OMB) defines Metropolitan Statistical Areas (MSAs) and Metropolitan Divisions (MDs) to provide nationally consistent definitions for collecting, tabulating, and publishing Federal statistics for a set of geographic areas. For all purposes under Regulation C, if an MSA is divided by OMB into MDs, the appropriate geographic unit to be used is the MD; if an MSA is not so divided by OMB into MDs, the appropriate geographic unit to be used is the MSA.

2(n) Multifamily Dwelling

1. *Multifamily residential structures.* The definition of dwelling in § 1003.2(f) includes multifamily residential structures and the corresponding commentary provides guidance on when such residential structures are included in that definition. *See* comments 2(f)–2 through –5.

2. *Special reporting requirements for multifamily dwellings.* The definition of multifamily dwelling in § 1003.2(n) includes a dwelling, regardless of construction method, that contains five or more individual dwelling units. Covered loans secured by a multifamily dwelling are subject to additional reporting requirements under § 1003.4(a)(32), but are not subject to reporting requirements under § 1003.4(a)(4), (10)(iii), (23), (29), or (30).

2(o) Open-End Line of Credit

1. *General.* Section 1003.2(o) defines an open-end line of credit as an extension of credit that is secured by a lien on a dwelling and that is an open-end credit plan as defined in Regulation Z, 12 CFR 1026.2(a)(20), but without regard to whether the credit is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11). Aside from these distinctions, institutions may rely on 12 CFR 1026.2(a)(20) and its related commentary in determining whether a transaction is an open-end line of credit under § 1003.2(o). For example, assume a business-purpose transaction that is exempt from Regulation Z pursuant to § 1026.3(a)(1) but that otherwise is open-end credit under Regulation Z § 1026.2(a)(20). The business-purpose transaction is an open-end line of credit under Regulation C, provided the other requirements of § 1003.2(o) are met. Similarly, assume a transaction in which the person extending open-end credit is a financial institution under § 1003.2(g) but is not a creditor under Regulation Z, § 1026.2(a)(17). In this example, the transaction is an open-end line of credit under Regulation C, provided the other requirements of § 1003.2(o) are met.

2. *Extension of credit.* Extension of credit has the same meaning under § 1003.2(o) as under § 1003.2(d) and comment 2(d)–2. Thus, for example, a renewal of an open-end line of credit is not an extension of credit under § 1003.2(o) and is not covered by Regulation C unless the existing debt obligation is satisfied and replaced. Likewise, under § 1003.2(o), each draw on an open-end line of credit is not an extension of credit.

2(p) Refinancing

1. *General.* Section 1003.2(p) defines a refinancing as a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower. Except as described in comment 2(p)–2, whether a refinancing has occurred is determined by reference to whether, based on the parties' contract and applicable law, the original debt obligation has been satisfied or replaced by a new debt obligation. Whether the original lien is satisfied is irrelevant. For example:

i. A new closed-end mortgage loan that satisfies and replaces one or more existing closed-end mortgage loans is a refinancing under § 1003.2(p).

ii. A new open-end line of credit that satisfies and replaces an existing closed-end mortgage loan is a refinancing under § 1003.2(p).

iii. Except as described in comment 2(p)–2, a new debt obligation that renews or modifies the terms of, but that does not satisfy and replace, an existing debt obligation, is not a refinancing under § 1003.2(p).

2. *New York State consolidation, extension, and modification agreements.* Where a transaction is completed pursuant to a New York State consolidation, extension, and modification agreement and is classified as a supplemental mortgage under New York Tax Law section§ 255, such that the borrower owes reduced or no mortgage recording taxes, and where, but for the agreement, the transaction would have met the definition of a refinancing under § 1003.2(p), the transaction is considered a refinancing under § 1003.2(p). *See also* comment 2(d)–2.ii.

3. *Existing debt obligation.* A closed-end mortgage loan or an open-end line of credit that satisfies and replaces one or more existing debt obligations is not a refinancing under § 1003.2(p) unless the existing debt obligation (or obligations) also was secured by a dwelling. For example, assume that a borrower has an existing $30,000 closed-end mortgage loan and obtains a new $50,000 closed-end mortgage loan that satisfies and replaces the existing $30,000 loan. The new $50,000 loan is a refinancing under § 1003.2(p). However, if the borrower obtains a new $50,000 closed-end mortgage loan that satisfies and replaces an existing $30,000 loan secured only by a personal guarantee, the new $50,000 loan is not a refinancing under § 1003.2(p). *See* § 1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under § 1003.3(c).

4. *Same borrower.* Section 1003.2(p) provides that, even if all of the other requirements of § 1003.2(p) are met, a closed-end mortgage loan or an open-end line of credit is not a refinancing unless the same borrower undertakes both the existing and the new obligation(s). Under § 1003.2(p), the ''same borrower'' undertakes both the existing and the new obligation(s) even if only one borrower is the same on both obligations. For example, assume that an existing closed-end mortgage loan (obligation X) is satisfied and replaced by a new closed-end mortgage loan (obligation Y). If borrowers A and B both are obligated on obligation X, and only borrower B is obligated on obligation Y, then obligation Y is a refinancing under § 1003.2(p), assuming the other requirements of § 1003.2(p) are met, because borrower B is obligated on both transactions. On the other hand, if only borrower A is obligated on obligation X, and only borrower B is obligated on obligation Y, then obligation Y is not a refinancing under

§ 1003.2(p). For example, assume that two spouses are divorcing. If both spouses are obligated on obligation X, but only one spouse is obligated on obligation Y, then obligation Y is a refinancing under § 1003.2(p), assuming the other requirements of § 1003.2(p) are met. On the other hand, if only spouse A is obligated on obligation X, and only spouse B is obligated on obligation Y, then obligation Y is not a refinancing under § 1003.2(p). *See* § 1003.4(a)(3) and related commentary for guidance about how to report the loan purpose of such transactions, if they are not otherwise excluded under § 1003.3(c).

5. *Two or more debt obligations.* Section 1003.2(p) provides that, to be a refinancing, a new debt obligation must satisfy and replace an existing debt obligation. Where two or more new obligations replace an existing obligation, each new obligation is a refinancing if, taken together, the new obligations satisfy the existing obligation. Similarly, where one new obligation replaces two or more existing obligations, the new obligation is a refinancing if it satisfies each of the existing obligations.

6. *Multiple-purpose loans.* A closed-end mortgage loan or an open-end line of credit may be used for multiple purposes. For example, a closed-end mortgage loan that is a refinancing under § 1003.2(p) may also be a home improvement loan under § 1003.2(i) and be used for other purposes if the refinancing is a cash-out refinancing and the funds will be used both for home improvement and to pay college tuition. Such a transaction is a multiple-purpose loan. Comment 4(a)(3)–3 provides details about how to report multiple-purpose covered loans.

Section 1003.3—Exempt Institutions and Excluded Transactions

3(c) Excluded Transactions

Paragraph 3(c)(1)

1. *Financial institution acting in a fiduciary capacity.* Section 1003.3(c)(1) provides that a closed-end mortgage loan or an open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity is an excluded transaction. A financial institution acts in a fiduciary capacity if, for example, the financial institution acts as a trustee.

Paragraph 3(c)(2)

1. *Loan or line of credit secured by a lien on unimproved land.* Section 1003.3(c)(2) provides that a closed-end mortgage loan or an open-end line of credit secured by a lien on unimproved land is an excluded transaction. A loan or line of credit is secured by a lien on unimproved land if the loan or line of credit is secured by vacant or unimproved property, unless the institution knows, based on information that it receives from the applicant or borrower at the time the application is received or the credit decision is made, that the proceeds of that loan or credit line will be used within two years after closing or account opening to construct a dwelling on, or to purchase a dwelling to be placed on, the land. A loan or line of credit that is not excludable under § 1003.3(c)(2) nevertheless may be excluded, for example, as temporary financing under § 1003.3(c)(3).

Paragraph 3(c)(3)

1. *Temporary financing.* Section 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded transactions. A loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is designed to be replaced by permanent financing at a later time. For example:

i. Lender A extends credit in the form of a bridge or swing loan to finance a borrower's down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A. The bridge or swing loan is excluded as temporary financing under § 1003.3(c)(3).

ii. Lender A extends credit to finance construction of a dwelling. A new extension of credit for permanent financing for the dwelling will be obtained, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under § 1003.3(c)(3).

iii. Assume the same scenario as in comment 3(c)(3)–1.ii, except that the initial construction loan is, or may be, renewed one or more times before the permanent financing is made. The initial construction loan, including any renewal thereof, is excluded as temporary financing under § 1003.3(c)(3).

iv. Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing with Lender A once the construction phase is complete. Under § 1003.3(c)(3), the loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. *See also* comment 2(j)–3.

v. Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under § 1003.3(c)(3), the loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under § 1003.3(c)(3) merely because its term is short.

Paragraph 3(c)(4)

1. *Purchase of an interest in a pool of loans.* Section 1003.3(c)(4) provides that the purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit is an excluded transaction. The purchase of an interest in a pool of loans or lines of credit includes, for example, mortgage-participation certificates, mortgage-backed securities, or real estate mortgage investment conduits.

Paragraph 3(c)(6)

1. *Mergers and acquisitions.* Section 1003.3(c)(6) provides that the purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office, are excluded transactions. If a financial institution acquires loans or lines of credit in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved and no other exclusion applies, the acquired loans or lines of credit are covered loans and are reported as described in comment 4(a)–1.iii.

Paragraph 3(c)(8)

1. *Partial interest.* Section 1003.3(c)(8) provides that the purchase of a partial interest in a closed-end mortgage loan or an open-end line of credit is an excluded transaction. If an institution acquires only a partial interest in a loan or line of credit, the institution does not report the transaction even if the institution participated in the underwriting and origination of the loan or line of credit. If an institution acquires a 100 percent interest in a loan or line of credit, the transaction is not excluded under § 1003.3(c)(8).

Paragraph 3(c)(9)

1. *Loan or line of credit used primarily for agricultural purposes.* Section 1003.3(c)(9) provides that an institution does not report a closed-end mortgage loan or an open-end line of credit used primarily for agricultural purposes. A loan or line of credit is used primarily for agricultural purposes if its funds will be used primarily for agricultural purposes, or if the loan or line of credit is secured by a dwelling that is located on real property that is used primarily for agricultural purposes (*e.g.,* a farm). An institution may refer to comment 3(a)–8 in the official interpretations of Regulation Z, 12 CFR part 1026, supplement I, for guidance on what is an agricultural purpose. An institution may use any reasonable standard to determine the primary use of the property. An institution may select the standard to apply on a case-by-case basis.

Paragraph 3(c)(10)

1. *General.* Section 1003.3(c)(10) provides a special rule for reporting a closed-end mortgage loan or an open-end line of credit that is or will be made primarily for a business or commercial purpose. If an institution determines that a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose, then the loan or line of credit is a covered loan only if it is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p) and no other exclusion applies. Section 1003.3(c)(10) does not categorically exclude all business- or commercial-purpose loans and lines of credit from coverage.

2. *Primary purpose.* An institution must determine in each case if a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose. If a closed-end mortgage loan or an open-end line of credit is deemed to be primarily for a business, commercial, or organizational purpose under Regulation Z, 12 CFR 1026.3(a) and its related commentary, then the loan or line of credit also is deemed

to be primarily for a business or commercial purpose under § 1003.3(c)(10).

3. *Examples—covered business- or commercial-purpose transactions.* The following are examples of closed-end mortgage loans and open-end lines of credit that are not excluded from reporting under § 1003.3(c)(10), because they primarily are for a business or commercial purpose, but they also meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve an office, for example a doctor's office, that is located in a dwelling; and

iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

4. *Examples—excluded business- or commercial-purpose transactions.* The following are examples of closed-end mortgage loans and open-end lines of credit that are not covered loans because they primarily are for a business or commercial purpose, but they do not meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to improve or expand a business, for example to renovate a family restaurant that is not located in a dwelling, or to purchase a warehouse, business equipment, or inventory;

ii. A closed-end mortgage loan or an open-end line of credit to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory; and

iii. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily for business or commercial purposes other than home purchase, home improvement, or refinancing, even if the loan or line of credit is cross-collateralized by a covered loan.

Paragraph 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 each of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under § 1003.2(g) because it originated 200 open-end lines of credit in 2020, 250 open-end lines of credit in 2021, 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 2020 and 2021, respectively. The open-end lines of credit that the bank originated, or for which it received applications, during 2022 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 for which it received applications, during 2022 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.

Paragraph 3(c)(12)

1. *General.* Section 1003.3(c)(12) provides that an open-end line of credit is an excluded transaction if a financial institution originated fewer than 100 open-end lines of credit in each of the two preceding calendar years. For example, assume that a bank is a financial institution in 2022 under § 1003.2(g) because it originated 50 closed-end mortgage loans in 2020, 75 closed-end mortgage loans in 2021, and met all of the other requirements under § 1003.2(g)(1). Also assume that the bank originated 75 and 85 open-end lines of credit in 2020 and 2021, respectively. The closed-end mortgage loans that the bank originated, or for which it received applications, during 2022 are covered loans and must be reported, unless they otherwise are excluded transactions under § 1003.3(c). However, the open-end lines of credit that the bank originated, or for which it received applications, during 2022 are excluded transactions under § 1003.3(c)(12) and need not be reported. *See* comments 4(a)–2 through –4 for guidance about the activities that constitute an origination.

Section 1003.4—Compilation of Reportable Data

4(a) Data Format and Itemization

1. *General.* Section 1003.4(a) describes a financial institution's obligation to collect data on applications it received, on covered loans that it originated, and on covered loans that it purchased during the calendar year covered by the loan/application register.

i. A financial institution reports these data even if the covered loans were subsequently sold by the institution.

ii. A financial institution reports data for applications that did not result in an origination but on which actions were taken–for example, an application that the institution denied, that it approved but that was not accepted, that it closed for incompleteness, or that the applicant withdrew during the calendar year covered by the loan/application register. A financial institution is required to report data regarding requests under a preapproval program (as defined in § 1003.2(b)(2)) only if the preapproval request is denied, results in the origination of a home purchase loan, or was approved but not accepted.

iii. If a financial institution acquires covered loans in bulk from another institution (for example, from the receiver for a failed institution), but no merger or acquisition of an institution, or acquisition of a branch office, is involved, the acquiring financial institution reports the covered loans as purchased loans.

iv. A financial institution reports the data for an application on the loan/application register for the calendar year during which the application was acted upon even if the institution received the application in a previous calendar year.

2. *Originations and applications involving more than one institution.* Section 1003.4(a) requires a financial institution to collect certain information regarding applications for covered loans that it receives and regarding covered loans that it originates. The following provides guidance on how to report originations and applications involving more than one institution. The discussion below assumes that all of the parties are financial institutions as defined by § 1003.2(g). The same principles apply if any of the parties is not a financial institution. Comment 4(a)–3 provides examples of transactions involving more than one institution, and comment 4(a)–4 discusses how to report actions taken by agents.

i. Only one financial institution reports each originated covered loan as an origination. If more than one institution was involved in the origination of a covered loan, the financial institution that made the credit decision approving the application before closing or account opening reports the loan as an origination. It is not relevant whether the loan closed or, in the case of an application, would have closed in the institution's name. If more than one institution approved an application prior to closing or account opening and one of those institutions purchased the loan after closing, the institution that purchased the loan after closing reports the loan as an origination. If a financial institution reports a transaction as an origination, it reports all of the information required for originations, even if the covered loan was not initially payable to the financial institution that is reporting the covered loan as an origination.

ii. In the case of an application for a covered loan that did not result in an origination, a financial institution reports the action it took on that application if it made a credit decision on the application or was reviewing the application when the application was withdrawn or closed for incompleteness. It is not relevant whether the financial institution received the application from the applicant or from another institution, such as a broker, or whether another financial institution also reviewed and reported an action taken on the same application.

3. *Examples—originations and applications involving more than one institution.* The following scenarios illustrate how an institution reports a particular application or covered loan. The illustrations assume that all of the parties are financial institutions as defined by § 1003.2(g). However, the same principles apply if any of the parties is not a financial institution.

i. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application and approved the loan prior to closing. The loan closed in Financial Institution A's name. Financial Institution B purchased the loan from Financial Institution A after closing. Financial Institution B was not acting as

Financial Institution A's agent. Since Financial Institution B made the credit decision prior to closing, Financial Institution B reports the transaction as an origination, not as a purchase. Financial Institution A does not report the transaction.

ii. Financial Institution A received an application for a covered loan from an applicant and forwarded that application to Financial Institution B. Financial Institution B reviewed the application before the loan would have closed, but the application did not result in an origination because Financial Institution B denied the application. Financial Institution B was not acting as Financial Institution A's agent. Since Financial Institution B made the credit decision, Financial Institution B reports the application as a denial. Financial Institution A does not report the application. If, under the same facts, the application was withdrawn before Financial Institution B made a credit decision, Financial Institution B would report the application as withdrawn and Financial Institution A would not report the application.

iii. Financial Institution A received an application for a covered loan from an applicant and approved the application before closing the loan in its name. Financial Institution A was not acting as Financial Institution B's agent. Financial Institution B purchased the covered loan from Financial Institution A. Financial Institution B did not review the application before closing. Financial Institution A reports the loan as an origination. Financial Institution B reports the loan as a purchase.

iv. Financial Institution A received an application for a covered loan from an applicant. If approved, the loan would have closed in Financial Institution B's name. Financial Institution A denied the application without sending it to Financial Institution B for approval. Financial Institution A was not acting as Financial Institution B's agent. Since Financial Institution A made the credit decision before the loan would have closed, Financial Institution A reports the application. Financial Institution B does not report the application.

v. Financial Institution A reviewed an application and made the credit decision to approve a covered loan using the underwriting criteria provided by a third party (*e.g.,* another financial institution, Fannie Mae, or Freddie Mac). The third party did not review the application and did not make a credit decision prior to closing. Financial Institution A was not acting as the third party's agent. Financial Institution A reports the application or origination. If the third party purchased the loan and is subject to Regulation C, the third party reports the loan as a purchase whether or not the third party reviewed the loan after closing. Assume the same facts, except that Financial Institution A approved the application, and the applicant chose not to accept the loan from Financial Institution A. Financial Institution A reports the application as approved but not accepted and the third party, assuming the third party is subject to Regulation C, does not report the application.

vi. Financial Institution A reviewed and made the credit decision on an application based on the criteria of a third-party insurer or guarantor (for example, a government or private insurer or guarantor). Financial Institution A reports the action taken on the application.

vii. Financial Institution A received an application for a covered loan and forwarded it to Financial Institutions B and C. Financial Institution A made a credit decision, acting as Financial Institution D's agent, and approved the application. The applicant did not accept the loan from Financial Institution D. Financial Institution D reports the application as approved but not accepted. Financial Institution A does not report the application. Financial Institution B made a credit decision, approving the application, the applicant accepted the offer of credit from Financial Institution B, and credit was extended. Financial Institution B reports the origination. Financial Institution C made a credit decision and denied the application. Financial Institution C reports the application as denied.

4. *Agents.* If a financial institution made the credit decision on a covered loan or application through the actions of an agent, the institution reports the application or origination. State law determines whether one party is the agent of another. For example, acting as Financial Institution A's agent, Financial Institution B approved an application prior to closing and a covered loan was originated. Financial Institution A reports the loan as an origination.

5. *Purchased loans.* i. A financial institution is required to collect data regarding covered loans it purchases. For purposes of § 1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year. For example, assume that Financial Institution A originates or purchases a covered loan and then sells it to Financial Institution B, who later requires Financial Institution A to repurchase the covered loan pursuant to the relevant contractual obligations. Financial Institution B reports the purchase from Financial Institution A, assuming it is a financial institution as defined under § 1003.2(g). Financial Institution A reports the repurchase from Financial Institution B as a purchase.

ii. In contrast, for purposes of § 1003.4(a), a purchase does not include a temporary transfer of a covered loan to an interim funder or warehouse creditor as part of an interim funding agreement under which the originating financial institution is obligated to repurchase the covered loan for sale to a subsequent investor. Such agreements, often referred to as ''repurchase agreements,'' are sometimes employed as functional equivalents of warehouse lines of credit. Under these agreements, the interim funder or warehouse creditor acquires legal title to the covered loan, subject to an obligation of the originating institution to repurchase at a future date, rather than taking a security interest in the covered loan as under the terms of a more conventional warehouse line of credit. To illustrate, assume Financial Institution A has an interim funding agreement with Financial Institution B to enable Financial Institution B to originate loans. Assume further that Financial Institution B originates a covered loan and that, pursuant to this agreement, Financial Institution A takes a temporary transfer of the covered loan until Financial Institution B arranges for the sale of the covered loan to a subsequent investor and that Financial Institution B repurchases the covered loan to enable it to complete the sale to the subsequent investor (alternatively, Financial Institution A may transfer the covered loan directly to the subsequent investor at Financial Institution B's direction, pursuant to the interim funding agreement). The subsequent investor could be, for example, a financial institution or other entity that intends to hold the loan in portfolio, a GSE or other securitizer, or a financial institution or other entity that intends to package and sell multiple loans to a GSE or other securitizer. In this example, the temporary transfer of the covered loan from Financial Institution B to Financial Institution A is not a purchase, and any subsequent transfer back to Financial Institution B for delivery to the subsequent investor is not a purchase, for purposes of § 1003.4(a). Financial Institution B reports the origination of the covered loan as well as its sale to the subsequent investor. If the subsequent investor is a financial institution under § 1003.2(g), it reports a purchase of the covered loan pursuant to § 1003.4(a), regardless of whether it acquired the covered loan from Financial Institution B or directly from Financial Institution A.

Paragraph 4(a)(1)(i)

1. *ULI—uniqueness.* Section 1003.4(a)(1)(i)(B)(*2*) requires a financial institution that assigns a universal loan identifier (ULI) to each covered loan or application (except as provided in § 1003.4(a)(1)(i)(D) and (E)) to ensure that the character sequence it assigns is unique within the institution and used only for the covered loan or application. A financial institution should assign only one ULI to any particular covered loan or application, and each ULI should correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. A financial institution may use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for which the ULI was used previously. A financial institution may not report an application for a covered loan in 2030 using the same ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same ULI to refer to multiple covered loans or applications.

2. *ULI—privacy.* Section 1003.4(a)(1)(i)(B)(*3*) prohibits a financial institution from including information that could be used to directly identify the applicant or borrower in the identifier that it

assigns for the application or covered loan of 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.

3. *ULI—purchased covered loan.* If a financial institution has previously reported a covered loan with a ULI under this part, a financial institution that purchases that covered loan must use the ULI that was previously reported under this part. For example, if a loan origination was previously reported under this part with a ULI, the financial institution that purchases the covered loan would report the purchase of the covered loan using the same ULI. A financial institution that purchases a covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. For example, if a financial institution that submits an annual loan/application register pursuant to § 1003.5(a)(1)(i) originates a covered loan that is purchased by a financial institution that submits a quarterly loan/application register pursuant to § 1003.5(a)(1)(ii), the financial institution that purchased the covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. A financial institution that purchases a covered loan assigns a ULI and records and submits it in its loan/application register pursuant to § 1003.5(a)(1)(i) or (ii), whichever is applicable, if the covered loan was not assigned a ULI by the financial institution that originated the loan because, for example, the loan was originated prior to January 1, 2018.

4. *ULI—reinstated or reconsidered application.* A financial institution may, at its option, use a ULI previously reported under this part if, during the same calendar year, an applicant asks the institution to reinstate a counteroffer that the applicant previously did not accept or asks the financial institution to reconsider an application that was previously denied, withdrawn, or closed for incompleteness. For example, if a financial institution reports a denied application in its second-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application, which results in an origination in the third quarter of 2020, the financial institution may report the origination in its third-quarter 2020 data submission using the same ULI that was reported for the denied application in its second-quarter 2020 data submission, so long as the financial institution treats the transaction as a continuation of the application. However, a financial institution may not use a ULI previously reported if it reinstates or reconsiders an application that occurred and was reported in a prior calendar year. For example, if a financial institution reports a denied application in its fourth-quarter 2020 data submission, pursuant to § 1003.5(a)(1)(ii), but then reconsiders the application resulting in an origination in the first quarter of 2021, the financial institution reports a denied application under the original ULI in its fourth-quarter 2020 data submission and an approved application with a different ULI in its first-quarter 2021 data submission, pursuant to § 1003.5(a)(1)(ii).

5. *ULI—check digit.* Section 1003.(4)(a)(1)(i)(C) requires that the two right-most characters in the ULI represent the check digit. Appendix C prescribes the requirements for generating a check digit and validating a ULI.

Paragraph 4(a)(1)(ii)

1. *Application date—consistency.* Section 1003.4(a)(1)(ii) requires that, in reporting the date of application, a financial institution report the date it received the application, as defined under § 1003.2(b), or the date shown on the application form. Although a financial institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). If the financial institution chooses to report the date shown on the application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the application definition provided under § 1003.2(b).

2. *Application date—indirect application.* For an application that was not submitted directly to the financial institution, the institution may report the date the application was received by the party that initially received the application, the date the application was received by the institution, or the date shown on the application form. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans).

3. *Application date—reinstated application.* If, within the same calendar year, an applicant asks a financial institution to reinstate a counteroffer that the applicant previously did not accept (or asks the institution to reconsider an application that was denied, withdrawn, or closed for incompleteness), the institution may treat that request as the continuation of the earlier transaction using the same ULI or as a new transaction with a new ULI. If the institution treats the request for reinstatement or reconsideration as a new transaction, it reports the date of the request as the application date. If the institution does not treat the request for reinstatement or reconsideration as a new transaction, it reports the original application date.

Paragraph 4(a)(2)

1. *Loan type—general.* If a covered loan is not, or in the case of an application would not have been, insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or guaranteed by the Rural Housing Service or the Farm Service Agency, an institution complies with § 1003.4(a)(2) by reporting the covered loan as not insured or guaranteed by the Federal Housing Administration, Veterans Administration, Rural Housing Service, or Farm Service Agency.

Paragraph 4(a)(3)

1. *Purpose—statement of applicant.* A financial institution may rely on the oral or written statement of an applicant regarding the proposed use of covered loan proceeds. For example, a lender could use a check-box or a purpose line on a loan application to determine whether the applicant intends to use covered loan proceeds for home improvement purposes. If an applicant provides no statement as to the proposed use of covered loan proceeds and the covered loan is not a home purchase loan, cash-out refinancing, or refinancing, a financial institution reports the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing for purposes of § 1003.4(a)(3).

2. *Purpose—refinancing and cash-out refinancing.* Section 1003.4(a)(3) requires a financial institution to report whether a covered loan is, or an application is for, a refinancing or a cash-out refinancing. A financial institution reports a covered loan or an application as a cash-out refinancing if it is a refinancing as defined by § 1003.2(p) and the institution considered it to be a cash-out refinancing in processing the application or setting the terms (such as the interest rate or origination charges) under its guidelines or an investor's guidelines. For example:

i. Assume a financial institution considers an application for a loan product to be a cash-out refinancing under an investor's guidelines because of the amount of cash received by the borrower at closing or account opening. Assume also that under the investor's guidelines, the applicant qualifies for the loan product and the financial institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with the loan product. In this example, the financial institution would report the covered loan as a cash-out refinancing for purposes of § 1003.4(a)(3).

ii. Assume a financial institution does not consider an application for a covered loan to be a cash-out refinancing under its own guidelines because the amount of cash received by the borrower does not exceed a certain threshold. Assume also that the institution approves the application, originates the covered loan, and sets the terms of the covered loan consistent with its own guidelines applicable to refinancings other than cash-out refinancings. In this example, the financial institution would report the covered loan as a refinancing for purposes of § 1003.4(a)(3).

iii. Assume a financial institution does not distinguish between a cash-out refinancing and a refinancing under its own guidelines, and sets the terms of all refinancings without regard to the amount of cash received by the borrower at closing or account opening, and does not offer loan products under investor guidelines. In this example, the financial institution reports all covered loans and applications for covered loans that are defined by § 1003.2(p) as refinancings for purposes of § 1003.4(a)(3).

3. *Purpose—multiple-purpose loan.* Section 1003.4(a)(3) requires a financial institution to report the purpose of a covered loan or application. If a covered loan is a

home purchase loan as well as a home improvement loan, a refinancing, or a cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the loan as a home purchase loan. If a covered loan is a home improvement loan as well as a refinancing or cash-out refinancing, but the covered loan is not a home purchase loan, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. If a covered loan is a refinancing or cash-out refinancing as well as for another purpose, such as for the purpose of paying educational expenses, but the covered loan is not a home purchase loan, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a refinancing or a cash-out refinancing, as appropriate. *See* comment 4(a)(3)–2. If a covered loan is a home improvement loan as well as for another purpose, but the covered loan is not a home purchase loan, a refinancing, or cash-out refinancing, an institution complies with § 1003.4(a)(3) by reporting the covered loan as a home improvement loan. *See* comment 2(i)–1.

4. *Purpose—other.* If a covered loan is not, or an application is not for, a home purchase loan, a home improvement loan, a refinancing, or a cash-out refinancing, a financial institution complies with § 1003.4(a)(3) by reporting the covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. For example, if a covered loan is for the purpose of paying educational expenses, the financial institution complies with § 1003.4(a)(3) by reporting the covered loan as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing. Section 1003.4(a)(3) also requires an institution to report a covered loan or application as for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing if it is a refinancing but, under the terms of the agreement, the financial institution was unconditionally obligated to refinance the obligation subject to conditions within the borrower's control.

5. *Purpose—business or commercial purpose loans.* If a covered loan primarily is for a business or commercial purpose as described in § 1003.3(c)(10) and comment 3(c)(10)–2 and is a home purchase loan, home improvement loan, or a refinancing, § 1003.4(a)(3) requires the financial institution to report the applicable loan purpose. If a loan primarily is for a business or commercial purpose but is not a home purchase loan, home improvement loan, or a refinancing, the loan is an excluded transaction under § 1003.3(c)(10).

Paragraph 4(a)(4)

1. *Request under a preapproval program.* Section 1003.4(a)(4) requires a financial institution to report whether an application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2). If an application or covered loan did not involve a request for a preapproval of a home purchase loan under a preapproval program as defined by § 1003.2(b)(2), a financial institution complies with § 1003.4(a)(4) by reporting that the application or covered loan did not involve such a request, regardless of whether the institution has such a program and the applicant did not apply through that program or the institution does not have a preapproval program as defined by § 1003.2(b)(2).

2. *Scope of requirement.* A financial institution reports that the application or covered loan did not involve a preapproval request for a purchased covered loan; an application or covered loan for any purpose other than a home purchase loan; an application for a home purchase loan or a covered loan that is a home purchase loan secured by a multifamily dwelling; an application or covered loan that is an open-end line of credit or a reverse mortgage; or an application that is denied, withdrawn by the applicant, or closed for incompleteness.

Paragraph 4(a)(5)

1. *Modular homes and prefabricated components.* Covered loans or applications related to modular homes should be reported with a construction method of site-built, regardless of whether they are on-frame or off-frame modular homes. Modular homes comply with local or other recognized buildings codes rather than standards established by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 *et seq.* Modular homes are not required to have HUD Certification Labels under 24 CFR 3280.11 or data plates under 24 CFR 3280.5. Modular homes may have a certification from a State licensing agency that documents compliance with State or other applicable building codes. On-frame modular homes are constructed on permanent metal chassis similar to those used in manufactured homes. The chassis are not removed on site and are secured to the foundation. Off-frame modular homes typically have floor construction similar to the construction of other site-built homes, and the construction typically includes wooden floor joists and does not include permanent metal chassis. Dwellings built using prefabricated components assembled at the dwelling's permanent site should also be reported with a construction method of site-built.

2. *Multifamily dwelling.* For a covered loan or an application for a covered loan related to a multifamily dwelling, the financial institution should report the construction method as site-built unless the multifamily dwelling is a manufactured home community, in which case the financial institution should report the construction method as manufactured home.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(6)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Principal residence.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as a residence that the applicant or borrower physically occupies and uses, or will occupy and use, as his or her principal residence. For purposes of § 1003.4(a)(6), an applicant or borrower can have only one principal residence at a time. Thus, a vacation or other second home would not be a principal residence. However, if an applicant or borrower buys or builds a new dwelling that will become the applicant's or borrower's principal residence within a year or upon the completion of construction, the new dwelling is considered the principal residence for purposes of applying this definition to a particular transaction.

3. *Second residences.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the loan or application relates is or will be used as a second residence. For purposes of § 1003.4(a)(6), a property is a second residence of an applicant or borrower if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence for purposes of § 1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of § 1003.4(a)(6).

4. *Investment properties.* Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as an investment property. For purposes of § 1003.4(a)(6), a property is an investment property if the borrower does not, or the applicant will not, occupy the property. For example, if a person purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of § 1003.4(a)(6). Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property for purposes of § 1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the borrower or applicant does not or will not occupy the property, even if the borrower or applicant does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under § 1003.2(f), that it does not occupy, but that is for the long-term residential use of its employees, the property is an investment property for purposes of § 1003.4(a)(6), even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time. If the property is for transitory use by employees, the property would not be considered a dwelling under § 1003.2(f). *See* comment 2(f)–3.

5. *Purchased covered loans.* For purchased covered loans, a financial institution may report principal residence unless the loan documents or application indicate that the property will not be occupied as a principal residence.

Paragraph 4(a)(7)

1. *Covered loan amount—counteroffer.* If an applicant accepts a counteroffer for an amount different from the amount for which the applicant applied, the financial institution reports the covered loan amount granted. If an applicant does not accept a counteroffer or fails to respond, the institution reports the amount initially requested.

2. *Covered loan amount—application approved but not accepted or preapproval request approved but not accepted.* A financial institution reports the covered loan amount that was approved.

3. *Covered loan amount—preapproval request denied, application denied, closed for incompleteness or withdrawn.* For a preapproval request that was denied, and for an application that was denied, closed for incompleteness, or withdrawn, a financial institution reports the amount for which the applicant applied.

4. *Covered loan amount—multiple-purpose loan.* A financial institution reports the entire amount of the covered loan, even if only a part of the proceeds is intended for home purchase, home improvement, or refinancing.

5. *Covered loan amount—closed-end mortgage loan.* For a closed-end mortgage loan, other than a purchased loan, an assumption, or a reverse mortgage, a financial institution reports the amount to be repaid as disclosed on the legal obligation. For a purchased closed-end mortgage loan or an assumption of a closed-end mortgage loan, a financial institution reports the unpaid principal balance at the time of purchase or assumption.

6. *Covered loan amount—open-end line of credit.* For an open-end line of credit, a financial institution reports the entire amount of credit available to the borrower under the terms of the open-end plan, including a purchased open-end line of credit and an assumption of an open-end line of credit, but not for a reverse mortgage open-end line of credit.

7. *Covered loan amount—refinancing.* For a refinancing, a financial institution reports the amount of credit extended under the terms of the new debt obligation.

8. *Covered loan amount—home improvement loan.* A financial institution reports the entire amount of a home improvement loan, even if only a part of the proceeds is intended for home improvement.

9. *Covered loan amount—non-federally insured reverse mortgage.* A financial institution reports the initial principal limit of a non-federally insured reverse mortgage as set forth in § 1003.4(a)(7)(iii).

Paragraph 4(a)(8)(i)

1. *Action taken—covered loan originated.* A financial institution reports that the covered loan was originated if the financial institution made a credit decision approving the application before closing or account opening and that credit decision results in an extension of credit. The same is true for an application that began as a request for a preapproval that subsequently results in a covered loan being originated. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

2. *Action taken—covered loan purchased.* A financial institution reports that the covered loan was purchased if the covered loan was purchased by the financial institution after closing or account opening and the financial institution did not make a credit decision on the application prior to closing or account opening, or if the financial institution did make a credit decision on the application prior to closing or account opening, but is repurchasing the loan from another entity that the loan was sold to. *See* comment 4(a)–5. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one financial institution is involved.

3. *Action taken—application approved but not accepted.* A financial institution reports application approved but not accepted if the financial institution made a credit decision approving the application before closing or account opening, subject solely to outstanding conditions that are customary commitment or closing conditions, but the applicant or the party that initially received the application fails to respond to the financial institution's approval within the specified time, or the closed-end mortgage loan was not otherwise consummated or the account was not otherwise opened. *See* comment 4(a)(8)(i)–13.

4. *Action taken—application denied.* A financial institution reports that the application was denied if it made a credit decision denying the application before an applicant withdraws the application or the file is closed for incompleteness. *See* comments 4(a)–2 through –4 for guidance on transactions in which more than one institution is involved.

5. *Action taken—application withdrawn.* A financial institution reports that the application was withdrawn when the application is expressly withdrawn by the applicant before the financial institution makes a credit decision denying the application, before the financial institution makes a credit decision approving the application, or before the file is closed for incompleteness. A financial institution also reports application withdrawn if the financial institution provides a conditional approval specifying underwriting or creditworthiness conditions, pursuant to comment 4(a)(8)(i)–13, and the application is expressly withdrawn by the applicant before the applicant satisfies all specified underwriting or creditworthiness conditions. A preapproval request that is withdrawn is not reportable under HMDA. *See* § 1003.4(a).

6. *Action taken—file closed for incompleteness.* A financial institution reports that the file was closed for incompleteness if the financial institution sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice before the applicant satisfies all underwriting or creditworthiness conditions. *See* comment 4(a)(8)(i)–13. If a financial institution then provides a notification of adverse action on the basis of incompleteness under Regulation B, 12 CFR 1002.9(c)(i), the financial institution may report the action taken as either file closed for incompleteness or application denied. A preapproval request that is closed for incompleteness is not reportable under HMDA. *See* § 1003.4(a).

7. *Action taken—preapproval request denied.* A financial institution reports that the preapproval request was denied if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision denying the preapproval request.

8. *Action taken—preapproval request approved but not accepted.* A financial institution reports that the preapproval request was approved but not accepted if the application was a request for a preapproval under a preapproval program as defined in § 1003.2(b)(2) and the institution made a credit decision approving the preapproval request but the application did not result in a covered loan originated by the financial institution.

9. *Action taken—counteroffers.* If a financial institution makes a counteroffer to lend on terms different from the applicant's initial request (for example, for a shorter loan maturity, with a different interest rate, or in a different amount) and the applicant does not accept the counteroffer or fails to respond, the institution reports the action taken as a denial on the original terms requested by the applicant. If the applicant accepts, the financial institution reports the action taken as covered loan originated.

10. *Action taken—rescinded transactions.* If a borrower rescinds a transaction after closing and before a financial institution is required to submit its loan/application register containing the information for the transaction under § 1003.5(a), the institution reports the transaction as an application that was approved but not accepted.

11. *Action taken—purchased covered loans.* An institution reports the covered loans that it purchased during the calendar year. An institution does not report the covered loans that it declined to purchase, unless, as discussed in comments 4(a)–2 through –4, the institution reviewed the application prior to closing, in which case it reports the application or covered loan according to comments 4(a)–2 through –4.

12. *Action taken—repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

13. *Action taken—conditional approvals.* If an institution issues an approval other than a commitment pursuant to a preapproval program as defined under § 1003.2(b)(2), and that approval is subject to the applicant meeting certain conditions, the institution reports the action taken as provided below dependent on whether the conditions are solely customary commitment or closing conditions or if the conditions include any underwriting or creditworthiness conditions.

i. *Action taken examples.* If the approval is conditioned on satisfying underwriting or creditworthiness conditions and they are not met, the institution reports the action taken as a denial. If, however, the conditions involve submitting additional information about underwriting or creditworthiness that the institution needs to make the credit decision, and the institution has sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond within the period of time specified in the notice, the institution reports the action taken as file closed for incompleteness. *See* comment 4(a)(8)(i)–6. If the conditions are solely customary commitment or closing conditions and the conditions are not met, the institution reports the action taken as approved but not accepted. If all the conditions (underwriting, creditworthiness, or customary commitment or closing conditions) are satisfied and the institution agrees to extend credit but the covered loan is not originated, the institution reports the action taken as application approved but not accepted. If the applicant expressly withdraws before satisfying all underwriting or creditworthiness conditions and before the institution denies the application or closes the file for incompleteness, the institution reports the action taken as application withdrawn. If all underwriting and creditworthiness conditions have been met, and the outstanding conditions are solely customary commitment or closing conditions and the applicant expressly withdraws before the covered loan is originated, the institution reports the action taken as application approved but not accepted.

ii. *Customary commitment or closing conditions.* Customary commitment or closing conditions include, for example: a clear-title requirement, an acceptable property survey, acceptable title insurance binder, clear termite inspection, a subordination agreement from another lienholder, and, where the applicant plans to use the proceeds from the sale of one home to purchase another, a settlement statement showing adequate proceeds from the sale.

iii. *Underwriting or creditworthiness conditions.* Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, a determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.

14. *Action taken—pending applications.* An institution does not report any covered loan application still pending at the end of the calendar year; it reports that application on its loan/application register for the year in which final action is taken.

Paragraph 4(a)(8)(ii)

1. *Action taken date—general.* A financial institution reports the date of the action taken.

2. *Action taken date—applications denied and files closed for incompleteness.* For applications, including requests for a preapproval, that are denied or for files closed for incompleteness, the financial institution reports either the date the action was taken or the date the notice was sent to the applicant.

3. *Action taken date—application withdrawn.* For applications withdrawn, the financial institution may report the date the express withdrawal was received or the date shown on the notification form in the case of a written withdrawal.

4. *Action taken date—approved but not accepted.* For a covered loan approved by an institution but not accepted by the applicant, the institution reports any reasonable date, such as the approval date, the deadline for accepting the offer, or the date the file was closed. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans).

5. *Action taken date—originations.* For covered loan originations, including a preapproval request that leads to an origination by the financial institution, an institution generally reports the closing or account opening date. For covered loan originations that an institution acquires from a party that initially received the application, the institution reports either the closing or account opening date, or the date the institution acquired the covered loan from the party that initially received the application. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may use the date of initial disbursement. For a construction/permanent covered loan, the institution reports either the closing or account opening date, or the date the covered loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). Notwithstanding this flexibility regarding the use of the closing or account opening date in connection with reporting the date action was taken, the institution must report the origination as occurring in the year in which the origination goes to closing or the account is opened.

6. *Action taken date—loan purchased.* For covered loans purchased, a financial institution reports the date of purchase.

Paragraph 4(a)(9)

1. *Multiple properties with one property taken as security.* If a covered loan is related to more than one property, but only one property is taken as security (or, in the case of an application, proposed to be taken as security), a financial institution reports the information required by § 1003.4(a)(9) for the property taken as or proposed to be taken as security. A financial institution does not report the information required by § 1003.4(a)(9) for the property or properties related to the loan that are not taken as or proposed to be taken as security. For example, if a covered loan is secured by property A, and the proceeds are used to purchase or rehabilitate (or to refinance home purchase or home improvement loans related to) property B, the institution reports the information required by § 1003.4(a)(9) for property A and does not report the information required by § 1003.4(a)(9) for property B.

2. *Multiple properties with more than one property taken as security.* If more than one property is taken or, in the case of an application, proposed to be taken as security for a single covered loan, a financial institution reports the covered loan or application in a single entry on its loan/application register and provides the information required by § 1003.4(a)(9) for one of the properties taken as security that contains a dwelling. A financial institution does not report information about the other properties taken as security. If an institution is required to report specific information about the property identified in § 1003.4(a)(9), the institution reports the information that relates to the property identified in § 1003.4(a)(9). For example, Financial Institution A originated a covered loan that is secured by both property A and property B, each of which contains a dwelling. Financial Institution A reports the loan as one entry on its loan/application register, reporting the information required by § 1003.4(a)(9) for either property A or property B. If Financial Institution A elects to report the information required by § 1003.4(a)(9) about property A, Financial Institution A also reports the information required by § 1003.4(a)(5), (6), (14), (29), and (30) related to property A. For aspects of the entries that do not refer to the property identified in § 1003.4(a)(9) (*i.e.,* § 1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in § 1003.4(a)(9).

3. *Multifamily dwellings.* A single multifamily dwelling may have more than one postal address. For example, three apartment buildings, each with a different street address, comprise a single multifamily dwelling that secures a covered loan. For the purposes of § 1003.4(a)(9), a financial institution reports the information required by § 1003.4(a)(9) in the same manner described in comment 4(a)(9)–2.

4. *Loans purchased from another institution.* The requirement to report the property location information required by § 1003.4(a)(9) applies not only to applications and originations but also to purchased covered loans.

5. *Manufactured home.* If the site of a manufactured home has not been identified, a financial institution complies by reporting that the information required by § 1003.4(a)(9) is not applicable.

Paragraph 4(a)(9)(i)

1. *General.* Section 1003.4(a)(9)(i) requires a financial institution to report the property address of the location of the property securing a covered loan or, in the case of an application, proposed to secure a covered loan. The address should correspond to the

property identified on the legal obligation related to the covered loan. For applications that did not result in an origination, the address should correspond to the location of the property proposed to secure the loan as identified by the applicant. For example, assume a loan is secured by a property located at 123 Main Street, and the applicant's or borrower's mailing address is a post office box. The financial institution should not report the post office box, and should report 123 Main Street.

2. *Property address—format.* A financial institution complies with the requirements in § 1003.4(a)(9)(i) by reporting the following information about the physical location of the property securing the loan.

i. *Street address.* When reporting the street address of the property, a financial institution complies by including, as applicable, the primary address number, the predirectional, the street name, street prefixes and/or suffixes, the postdirectional, the secondary address identifier, and the secondary address, as applicable. For example, 100 N Main ST Apt 1.

ii. *City name.* A financial institution complies by reporting the name of the city in which the property is located.

iii. *State name.* A financial institution complies by reporting the two letter State code for the State in which the property is located, using the U.S. Postal Service official State abbreviations.

iv. *Zip Code.* A financial institution complies by reporting the five or nine digit Zip Code in which the property is located.

3. *Property address—not applicable.* A financial institution complies with § 1003.4(a)(9)(i) by indicating that the requirement is not applicable if the property address of the property securing the covered loan is not known. For example, if the property did not have a property address at closing or if the applicant did not provide the property address of the property to the financial institution before the application was denied, withdrawn, or closed for incompleteness, the financial institution complies with § 1003.4(a)(9)(i) by indicating that the requirement is not applicable.

Paragraph 4(a)(9)(ii)(B)

1. *General.* A financial institution complies by reporting the five-digit Federal Information Processing Standards (FIPS) numerical county code.

Paragraph 4(a)(9)(ii)(C)

1. *General.* Census tract numbers are defined by the U.S. Census Bureau. A financial institution complies with § 1003.4(a)(9)(ii)(C) if it uses the boundaries and codes in effect on January 1 of the calendar year covered by the loan/application register that it is reporting.

Paragraph 4(a)(10)(i)

1. *Applicant data—general.* Refer to appendix B to this part for instructions on collection of an applicant's ethnicity, race, and sex.

2. *Transition rule for applicant data collected prior to January 1, 2018.* If a financial institution receives an application prior to January 1, 2018, but final action is taken on or after January 1, 2018, the financial institution complies with § 1003.4(a)(10)(i) and (b) if it collects the information in accordance with the requirements in effect at the time the information was collected. For example, if a financial institution receives an application on November 15, 2017, collects the applicant's ethnicity, race, and sex in accordance with the instructions in effect on that date, and takes final action on the application on January 5, 2018, the financial institution has complied with the requirements of § 1003.4(a)(10)(i) and (b), even though those instructions changed after the information was collected but before the date of final action. However, if, in this example, the financial institution collected the applicant's ethnicity, race, and sex on or after January 1, 2018, § 1003.4(a)(10)(i) and (b) requires the financial institution to collect the information in accordance with the amended instructions.

Paragraph 4(a)(10)(ii)

1. *Applicant data—completion by financial institution.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting the applicant's age, as of the application date under § 1003.4(a)(1)(ii), as the number of whole years derived from the date of birth as shown on the application form. For example, if an applicant provides a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/14/2015, the institution reports 44 as the applicant's age.

2. *Applicant data—co-applicant.* If there are no co-applicants, the financial institution reports that there is no co-applicant. If there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form. A co-applicant may provide an absent co-applicant's age on behalf of the absent co-applicant.

3. *Applicant data—purchased loan.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable when reporting a purchased loan for which the institution chooses not to report the income.

4. *Applicant data—non-natural person.* A financial institution complies with § 1003.4(a)(10)(ii) by reporting that the requirement is not applicable if the applicant or co-applicant is not a natural person (for example, a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report the applicant's age is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution reports the applicant's age.

5. *Applicant data—guarantor.* For purposes of § 1003.4(a)(10)(ii), if a covered loan or application includes a guarantor, a financial institution does not report the guarantor's age.

Paragraph 4(a)(10)(iii)

1. *Income data—income relied on.* When a financial institution evaluates income as part of a credit decision, it reports the gross annual income relied on in making the credit decision. For example, if an institution relies on an applicant's salary to compute a debt-to-income ratio but also relies on the applicant's annual bonus to evaluate creditworthiness, the institution reports the salary and the bonus to the extent relied upon. If an institution relies on only a portion of an applicant's income in its determination, it does not report that portion of income not relied on. For example, if an institution, pursuant to lender and investor guidelines, does not rely on an applicant's commission income because it has been earned for less than 12 months, the institution does not include the applicant's commission income in the income reported. Likewise, if an institution relies on the verified gross income of the applicant in making the credit decision, then the institution reports the verified gross income. Similarly, if an institution relies on the income of a cosigner to evaluate creditworthiness, the institution includes the cosigner's income to the extent relied upon. An institution, however, does not include the income of a guarantor who is only secondarily liable.

2. *Income data—co-applicant.* If two persons jointly apply for a covered loan and both list income on the application, but the financial institution relies on the income of only one applicant in evaluating creditworthiness, the institution reports only the income relied on.

3. *Income data—loan to employee.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable for a covered loan to, or an application from, its employee to protect the employee's privacy, even though the institution relied on the employee's income in making the credit decision.

4. *Income data—assets.* A financial institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from annuitization or depletion of an applicant's remaining assets.

5. *Income data—credit decision not made.* Section 1003.4(a)(10)(iii) requires a financial institution to report the gross annual income relied on in processing the application if a credit decision was not made. For example, assume an institution received an application that included an applicant's self-reported income, but the application was withdrawn before a credit decision that would have considered income was made. The financial institution reports the income information relied on in processing the application at the time that the application was withdrawn or the file was closed for incompleteness.

6. *Income data—credit decision not requiring consideration of income.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable if the application did not or would not have required a credit decision that considered income under the financial institution's policies and procedures. For example, if the financial institution's policies and procedures do not consider income for a streamlined refinance program, the institution reports that the requirement is not

applicable, even if the institution received income information from the applicant.

7. *Income data—non-natural person.* A financial institution reports that the requirement is not applicable when the applicant or co-applicant is not a natural person (*e.g.,* a corporation, partnership, or trust). For example, for a transaction involving a trust, a financial institution reports that the requirement to report income data is not applicable if the trust is the applicant. On the other hand, if the applicant is a natural person, and is the beneficiary of a trust, a financial institution is required to report the information described in § 1003.4(a)(10)(iii).

8. *Income data—multifamily properties.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when the covered loan is secured by, or application is proposed to be secured by, a multifamily dwelling.

9. *Income data—purchased loans.* A financial institution complies with § 1003.4(a)(10)(iii) by reporting that the requirement is not applicable when reporting a purchased covered loan for which the institution chooses not to report the income.

10. *Income data—rounding.* A financial institution complies by reporting the dollar amount of the income in thousands, rounded to the nearest thousand ($500 rounds up to the next $1,000). For example, $35,500 is reported as 36.

Paragraph 4(a)(11)

1. *Type of purchaser—loan-participation interests sold to more than one entity.* A financial institution that originates a covered loan, and then sells it to more than one entity, reports the ''type of purchaser'' based on the entity purchasing the greatest interest, if any. For purposes of § 1003.4(a)(11), if a financial institution sells some interest or interests in a covered loan but retains a majority interest in that loan, it does not report the sale.

2. *Type of purchaser—swapped covered loans.* Covered loans ''swapped'' for mortgage-backed securities are to be treated as sales; the purchaser is the entity receiving the covered loans that are swapped.

3. *Type of purchaser—affiliate institution.* For purposes of complying with § 1003.4(a)(11), the term ''affiliate'' means any company that controls, is controlled by, or is under common control with, another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

4. *Type of purchaser—private securitizations.* A financial institution that knows or reasonably believes that the covered loan it is selling will be securitized by the entity purchasing the covered loan, other than by one of the government-sponsored enterprises, reports the purchasing entity type as a private securitizer regardless of the type or affiliation of the purchasing entity. Knowledge or reasonable belief could, for example, be based on the purchase agreement or other related documents, the financial institution's previous transactions with the purchaser, or the purchaser's role as a securitizer (such as an investment bank). If a financial institution selling a covered loan does not know or reasonably believe that the purchaser will securitize the loan, and the seller knows that the purchaser frequently holds or disposes of loans by means other than securitization, then the financial institution should report the covered loan as purchased by, as appropriate, a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, finance company, affiliate institution, or other type of purchaser.

5. *Type of purchaser—mortgage company.* For purposes of complying with § 1003.4(a)(11), a mortgage company means a nondepository institution that purchases covered loans and typically originates such loans. A mortgage company might be an affiliate or a subsidiary of a bank holding company or thrift holding company, or it might be an independent mortgage company. Regardless, a financial institution reports the purchasing entity type as a mortgage company, unless the mortgage company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

6. *Purchases by subsidiaries.* A financial institution that sells a covered loan to its subsidiary that is a commercial bank, savings bank, or savings association, should report the covered loan as purchased by a commercial bank, savings bank, or savings association. A financial institution that sells a covered loan to its subsidiary that is a life insurance company, should report the covered loan as purchased by a life insurance company. A financial institution that sells a covered loan to its subsidiary that is a credit union, mortgage company, or finance company, should report the covered loan as purchased by a credit union, mortgage company, or finance company. If the subsidiary that purchases the covered loan is not a commercial bank, savings bank, savings association, life insurance company, credit union, mortgage company, or finance company, the seller institution should report the loan as purchased by other type of purchaser. The financial institution should report the covered loan as purchased by an affiliate institution when the subsidiary is an affiliate of the seller institution.

7. *Type of purchaser—bank holding company or thrift holding company.* When a financial institution sells a covered loan to a bank holding company or thrift holding company (rather than to one of its subsidiaries), it should report the loan as purchased by other type of purchaser, unless the bank holding company or thrift holding company is an affiliate of the seller institution, in which case the seller institution should report the loan as purchased by an affiliate institution.

8. *Repurchased covered loans.* See comment 4(a)–5 regarding reporting requirements when a covered loan is repurchased by the originating financial institution.

9. *Type of purchaser—quarterly recording.* For purposes of recording the type of purchaser within 30 calendar days after the end of the calendar quarter pursuant to § 1003.4(f), a financial institution records that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during the calendar quarter for which the institution is recording the data. If the financial institution sells the covered loan in a subsequent quarter of the same calendar year, the financial institution records the type of purchaser on its loan/application register for the quarter in which the covered loan was sold. If a financial institution sells the covered loan in a succeeding year, the financial institution should not record the sale.

10. *Type of purchaser—not applicable.* A financial institution reports that the requirement is not applicable for applications that were denied, withdrawn, closed for incompleteness or approved but not accepted by the applicant; and for preapproval requests that were denied or approved but not accepted by the applicant. A financial institution also reports that the requirement is not applicable if the institution originated or purchased a covered loan and did not sell it during that same calendar year.

Paragraph 4(a)(12)

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Bureau uses a survey of lenders that both meets the criteria of § 1003.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. *Bureau tables.* The Bureau publishes on the FFIEC's Web site (*http://www.ffiec.gov/hmda*), in tables entitled ''Average Prime Offer Rates-Fixed'' and ''Average Prime Offer Rates-Adjustable,'' current and historic average prime offer rates for a wide variety of closed-end transaction types. The Bureau calculates an annual percentage rate, consistent with Regulation Z (see 12 CFR 1026.22 and part 1026, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)–1. The Bureau uses loan pricing terms available in the survey and other information to estimate annual percentage rates for other types of transactions for which direct survey data are not available. The Bureau publishes on the FFIEC's Web site the methodology it uses to arrive at these estimates. A financial institution may either use the average prime offer rates published by the Bureau or may determine average prime offer rates itself by employing the methodology published on the FFIEC Web site. A financial institution that determines average prime offer rates itself, however, is responsible for correctly determining the rates in accordance with the published methodology.

3. *Rate spread calculation—annual percentage rate.* The requirements of § 1003.4(a)(12)(i) refer to the covered loan's annual percentage rate. A financial institution complies with § 1003.4(a)(12)(i) by relying on the annual percentage rate for the covered loan, as calculated and disclosed pursuant to Regulation Z, 12 CFR 1026.18 or 1026.38 (for closed-end mortgage loans) or 1026.40 (for open-end credit lines of credit), as applicable.

4. *Rate spread calculation—comparable transaction.* The rate spread calculation in § 1003.4(a)(12)(i) is defined by reference to a comparable transaction, which is determined according to the covered loan's amortization type (*i.e.,* fixed- or variable-rate) and loan term. For covered loans that are open-end lines of credit, § 1003.4(a)(12)(i) requires a financial institution to identify the most closely comparable closed-end transaction. The tables of average prime offer rates published by the Bureau (see comment 4(a)(12)–2) provide additional detail about how to identify the comparable transaction.

i. *Fixed-rate transactions.* For fixed-rate covered loans, the term for identifying the comparable transaction is the transaction's maturity (*i.e.,* the period until the last payment will be due under the closed-end mortgage loan contract or open-end line of credit agreement). If an open-end credit plan has a fixed rate but no definite plan length, a financial institution complies with § 1003.4(a)(12)(i) by using a 30-year fixed-rate loan as the most closely comparable closed-end transaction. Financial institutions may refer to the table on the FFIEC Web site entitled ''Average Prime Offer Rates-Fixed'' when identifying a comparable fixed-rate transaction.

ii. *Variable-rate transactions.* For variable-rate covered loans, the term for identifying the comparable transaction is the initial, fixed-rate period (*i.e.,* the period until the first scheduled rate adjustment). For example, five years is the relevant term for a variable-rate transaction with a five-year, fixed-rate introductory period that is amortized over thirty years. Financial institutions may refer to the table on the FFIEC Web site entitled ''Average Prime Offer Rates-Variable'' when identifying a comparable variable-rate transaction. If an open-end line of credit has a variable rate and an optional, fixed-rate feature, a financial institution uses the rate table for variable-rate transactions.

iii. *Term not in whole years.* When a covered loan's term to maturity (or, for a variable-rate transaction, the initial fixed-rate period) is not in whole years, the financial institution uses the number of whole years closest to the actual loan term or, if the actual loan term is exactly halfway between two whole years, by using the shorter loan term. For example, for a loan term of ten years and three months, the relevant term is ten years; for a loan term of ten years and nine months, the relevant term is 11 years; for a loan term of ten years and six months, the relevant term is ten years. If a loan term includes an odd number of days, in addition to an odd number of months, the financial institution rounds to the nearest whole month, or rounds down if the number of odd days is exactly halfway between two months. The financial institution rounds to one year any covered loan with a term shorter than six months, including variable-rate covered loans with no initial, fixed-rate periods. For example, if an open-end covered loan has a rate that varies according to an index plus a margin, with no introductory, fixed-rate period, the transaction term is one year.

iv. *Amortization period longer than loan term.* If the amortization period of a covered loan is longer than the term of the transaction to maturity, § 1003.4(a)(12)(i) requires a financial institution to use the loan term to determine the applicable average prime offer rate. For example, assume a financial institution originates a closed-end, fixed-rate loan that has a term to maturity of five years and a thirty-year amortization period that results in a balloon payment. The financial institution complies with § 1003.4(a)(12)(i) by using the five-year loan term.

5. *Rate-set date.* The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the covered loan's interest rate was set by the financial institution for the final time before closing or account opening.

i. *Rate-lock agreement.* If an interest rate is set pursuant to a ''lock-in'' agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)–5.ii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before closing or account opening. The same rule applies when a rate-lock agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing or account opening.

ii. *Change in loan program.* If a financial institution issues a rate-lock commitment under one loan program, the borrower subsequently changes to another program that is subject to different pricing terms, and the financial institution changes the rate promised to the borrower under the rate-lock commitment accordingly, the rate-set date is the date of the program change. However, if the financial institution changes the promised rate to the rate that would have been available to the borrower under the new program on the date of the original rate-lock commitment, then that is the date the rate is set, provided the financial institution consistently follows that practice in all such cases or the original rate-lock agreement so provided. For example, assume that a borrower locks a rate of 2.5 percent on June 1 for a 30-year, variable-rate loan with a 5-year, fixed-rate introductory period. On June 15, the borrower decides to switch to a 30-year, fixed-rate loan, and the rate available to the borrower for that product on June 15 is 4.0 percent. On June 1, the 30-year, fixed-rate loan would have been available to the borrower at a rate of 3.5 percent. If the financial institution offers the borrower the 3.5 percent rate (*i.e.,* the rate that would have been available to the borrower for the fixed-rate product on June 1, the date of the original rate-lock) because the original agreement so provided or because the financial institution consistently follows that practice for borrowers who change loan programs, then the financial institution should use June 1 as the rate-set date. In all other cases, the financial institution should use June 15 as the rate-set date.

iii. *Brokered loans.* When a financial institution has reporting responsibility for an application for a covered loan that it received from a broker, as discussed in comment 4(a)–4 (*e.g.,* because the financial institution makes a credit decision prior to closing or account opening), the rate-set date is the last date the financial institution set the rate with the broker, not the date the broker set the borrower's rate.

6. *Compare the annual percentage rate to the average prime offer rate.* Section 1003.4(a)(12)(i) requires a financial institution to compare the covered loan's annual percentage rate to the most recently available average prime offer rate that was in effect for the comparable transaction as of the rate-set date. For purposes of § 1003.4(a)(12)(i), the most recently available rate means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. However, § 1003.4(a)(12)(i) does not permit a financial institution to use an average prime offer rate before its effective date.

7. *Rate spread—not applicable.* If the covered loan is an assumption, reverse mortgage, a purchased loan, or is not subject to Regulation Z, 12 CFR part 1026, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. If the application did not result in an origination for a reason other than the application was approved but not accepted by the applicant, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable.

8. *Application approved but not accepted or preapproval request approved but not accepted.* In the case of an application approved but not accepted or a preapproval request that was approved but not accepted, § 1003.4(a)(12) requires a financial institution to report the applicable rate spread.

Paragraph 4(a)(13)

1. *HOEPA status—not applicable.* If the covered loan is not subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z, 12 CFR 1026.32, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable. If an application did not result in an origination, a financial institution complies with § 1003.4(a)(13) by reporting that the requirement is not applicable.

Paragraph 4(a)(14)

1. *Determining lien status for applications and covered loans originated and purchased.* i. Financial institutions are required to report lien status for covered loans they originate

and purchase and applications that do not result in originations (preapproval requests that are approved but not accepted, preapproval requests that are denied, applications that are approved but not accepted, denied, withdrawn, or closed for incompleteness). For covered loans purchased by a financial institution, lien status is determined by reference to the best information readily available to the financial institution at the time of purchase. For covered loans that a financial institution originates and applications that do not result in originations, lien status is determined by reference to the best information readily available to the financial institution at the time final action is taken and to the financial institution's own procedures. Thus, financial institutions may rely on the title search they routinely perform as part of their underwriting procedures—for example, for home purchase loans. Regulation C does not require financial institutions to perform title searches solely to comply with HMDA reporting requirements. Financial institutions may rely on other information that is readily available to them at the time final action is taken and that they reasonably believe is accurate, such as the applicant's statement on the application or the applicant's credit report. For example, where the applicant indicates on the application that there is a mortgage on the property or where the applicant's credit report shows that the applicant has a mortgage—and that mortgage will not be paid off as part of the transaction—the financial institution may assume that the loan it originates is secured by a subordinate lien. If the same application did not result in an origination—for example, because the application was denied or withdrawn—the financial institution would report the application as an application for a subordinate-lien loan.

ii. Financial institutions may also consider their established procedures when determining lien status for applications that do not result in originations. For example, assume an applicant applies to a financial institution to refinance a $100,000 first mortgage; the applicant also has an open-end line of credit for $20,000. If the financial institution's practice in such a case is to ensure that it will have first-lien position—through a subordination agreement with the holder of the lien securing the open-end line of credit—then the financial institution should report the application as an application for a first-lien covered loan.

2. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

Paragraph 4(a)(15)

1. *Credit score—relied on.* Except for purchased covered loans, § 1003.4(a)(15) requires a financial institution to report the credit score or scores relied on in making the credit decision and information about the scoring model used to generate each score. A financial institution relies on a credit score in making the credit decision if the credit score was a factor in the credit decision even if it was not a dispositive factor. For example, if a credit score is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the credit score even if the financial institution denies the application because one or more underwriting requirements other than the credit score are not satisfied.

2. *Credit score—multiple credit scores.* When a financial institution obtains or creates two or more credit scores for a single applicant or borrower but relies on only one score in making the credit decision (for example, by relying on the lowest, highest, most recent, or average of all of the scores), the financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used. When a financial institution obtains or creates two or more credit scores for an applicant or borrower and relies on multiple scores for the applicant or borrower in making the credit decision (for example, by relying on a scoring grid that considers each of the scores obtained or created for the applicant or borrower without combining the scores into a composite score), § 1003.4(a)(15) requires the financial institution to report one of the credit scores for the applicant or borrower that was relied on in making the credit decision. In choosing which credit score to report in this circumstance, a financial institution need not use the same approach for its entire HMDA submission, but it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). In instances such as these, the financial institution should report the name and version of the credit scoring model for the score reported.

3. *Credit score—multiple applicants or borrowers.* In a transaction involving two or more applicants or borrowers for which the financial institution obtains or creates a single credit score, and relies on that credit score in making the credit decision for the transaction, the institution complies with § 1003.4(a)(15) by reporting that credit score for either the applicant or first co-applicant. Otherwise, a financial institution complies with § 1003.4(a)(15) by reporting a credit score for the applicant that it relied on in making the credit decision, if any, and a credit score for the first co-applicant that it relied on in making the credit decision, if any. To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on the lowest, highest, most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used. Alternatively, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates three credit scores for the applicant and three credit scores for the co-applicant. Assume further that the financial institution relies on the middle credit score for the applicant and the middle credit score for the co-applicant to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting both the middle score for the applicant and the middle score for the co-applicant.

4. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable, even if the financial institution had obtained or created a credit score for the applicant or co-applicant.

5. *Transactions for which no credit score was relied on.* If a financial institution makes a credit decision without relying on a credit score for the applicant or borrower, the financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

6. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

7. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(15) by reporting that the requirement is not applicable.

Paragraph 4(a)(16)

1. *Reason for denial—general.* A financial institution complies with § 1003.4(a)(16) by reporting the principal reason or reasons it denied the application, indicating up to four reasons. The financial institution should report only the principal reason or reasons it denied the application, even if there are fewer than four reasons. For example, if a financial institution denies the application because of the applicant's credit history and debt-to-income ratio, the financial institution need only report these two principal reasons. The reasons reported must be specific and accurately describe the principal reason or reasons the financial institution denied the application.

2. *Reason for denial—preapproval request denied.* Section 1003.4(a)(16) requires a financial institution to report the principal reason or reasons it denied the application. A request for a preapproval under a preapproval program as defined by § 1003.2(b)(2) is an application. If a financial institution denies a preapproval request, the financial institution complies with § 1003.4(a)(16) by reporting the reason or reasons it denied the preapproval request.

3. *Reason for denial—adverse action model form or similar form.* If a financial institution

chooses to provide the applicant the reason or reasons it denied the application using the model form contained in appendix C to Regulation B (Form C–1, Sample Notice of Action Taken and Statement of Reasons) or a similar form, § 1003.4(a)(16) requires the financial institution to report the reason or reasons that were specified on the form by the financial institution, which includes reporting the ''Other'' reason or reasons that were specified on the form by the financial institution, if applicable. If a financial institution chooses to provide a disclosure of the applicant's right to a statement of specific reasons using the model form contained in appendix C to Regulation B (Form C–5, Sample Disclosure of Right to Request Specific Reasons for Credit Denial) or a similar form, or chooses to provide the denial reason or reasons orally under Regulation B, 12 CFR 1002.9(a)(2)(ii), the financial institution complies with § 1003.4(a)(16) by entering the principal reason or reasons it denied the application.

4. *Reason for denial—not applicable.* A financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the action taken on the application, pursuant to § 1003.4(a)(8), is not a denial. For example, a financial institution complies with § 1003.4(a)(16) by reporting that the requirement is not applicable if the loan is originated or purchased by the financial institution, or the application or preapproval request was approved but not accepted, or the application was withdrawn before a credit decision was made, or the file was closed for incompleteness.

Paragraph 4(a)(17)(i)

1. *Total loan costs—not applicable.* Section 1003.4(a)(17)(i) does not require financial institutions to report the total loan costs for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.43(c), and 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(17)(i) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of total loan costs changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(17)(i) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of total loan costs only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of total loan costs in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of total loan costs on its annual loan/application register.

Paragraph 4(a)(17)(ii)

1. *Total points and fees—not applicable.* Section 1003.4(a)(17)(ii) does not require financial institutions to report the total points and fees for transactions not subject to Regulation Z, 12 CFR 1026.43(c), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes, or for applications or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(17)(ii) by reporting that the requirement is not applicable to the transaction.

2. *Total points and fees cure mechanism.* For covered loans subject to this reporting requirement, if a financial institution determines that the transaction's total points and fees exceeded the applicable limit and cures the overage pursuant to Regulation Z, 12 CFR 1026.43(e)(3)(iii) and (iv), a financial institution complies with § 1003.4(a)(17)(ii) by reporting the correct amount of total points and fees, provided that the cure was effected during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission, the financial institution reports the revised amount of total points and fees only if it cured the overage prior to the end of the quarter in which closing occurred. The financial institution does not report the revised amount of total points and fees in its quarterly submission if it cured the overage after the end of the quarter, even if the cure was effected prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the revised amount of total points and fees on its annual loan/application register.

Paragraph 4(a)(18)

1. *Origination charges—not applicable.* Section 1003.4(a)(18) does not require financial institutions to report the total borrower-paid origination charges for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(18) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the total amount of borrower-paid origination charges changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(18) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of origination charges only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of origination charges in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of origination charges on its annual loan/application register.

Paragraph 4(a)(19)

1. *Discount points—not applicable.* Section 1003.4(a)(19) does not require financial institutions to report the discount points for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(19) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of discount points changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(19) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(ii), if the financial institution provides a corrected

disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of discount points only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of discount points in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of discount points on its annual loan/application register.

Paragraph 4(a)(20)

1. *Lender credits—not applicable.* Section 1003.4(a)(20) does not require financial institutions to report lender credits for applications, or for transactions not subject to Regulation Z, 12 CFR 1026.19(f), such as open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. In these cases, a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

2. *Purchased loans—applications received prior to the integrated disclosure effective date.* For purchased covered loans subject to this reporting requirement for which applications were received by the selling entity prior to the effective date of Regulation Z, 12 CFR 1026.19(f), a financial institution complies with § 1003.4(a)(20) by reporting that the requirement is not applicable to the transaction.

3. *Revised disclosures.* If the amount of lender credits changes because a financial institution provides a revised version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to Regulation Z, 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(20) by reporting the revised amount, provided that the revised disclosure was provided to the borrower during the same reporting period in which closing occurred. For example, in the case of a financial institution's quarterly submission made pursuant to § 1003.5(a)(1)(ii), if the financial institution provides a corrected disclosure to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided prior to the end of the quarter in which closing occurred. The financial institution does not report the corrected amount of lender credits in its quarterly submission if the corrected disclosure was provided after the end of the quarter, even if the corrected disclosure was provided prior to the deadline for timely submission of the financial institution's quarterly data. However, the financial institution reports the corrected amount of lender credits on its annual loan/application register.

Paragraph 4(a)(21)

1. *Interest rate—disclosures.* Section 1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the approved application, or to the covered loan at closing or account opening. For covered loans or applications subject to the disclosure requirements of Regulation Z, 12 CFR 1026.19(e) or (f), a financial institution complies with § 1003.4(a)(21) by reporting the interest rate disclosed on the applicable disclosure. For covered loans for which disclosures were provided pursuant to both 12 CFR 1026.19(e) and 12 CFR 1026.19(f), a financial institution reports the interest rate disclosed pursuant to 12 CFR 1026.19(f). A financial institution may rely on the definitions and commentary to the sections of Regulation Z relevant to the disclosure of the interest rate pursuant to 12 CFR 1026.19(e) or 12 CFR 1026.19(f).

2. *Applications.* In the case of an application, § 1003.4(a)(21) requires a financial institution to report the applicable interest rate only if the application has been approved by the financial institution but not accepted by the borrower. In such cases, a financial institution reports the interest rate applicable at the time that the application was approved by the financial institution. A financial institution may report the interest rate appearing on the disclosure provided pursuant to 12 CFR 1026.19(e) or (f) if such disclosure accurately reflects the interest rate at the time the application was approved. For applications that have been denied or withdrawn, or files closed for incompleteness, a financial institution reports that no interest rate was applicable to the application.

3. *Adjustable rate—interest rate unknown.* Except as provided in comment 4(a)(21)–1, for adjustable-rate covered loans or applications, if the interest rate is unknown at the time that the application was approved, or at closing or account opening, a financial institution reports the fully-indexed rate based on the index applicable to the covered loan or application. For purposes of § 1003.4(a)(21), the fully-indexed rate is the index value and margin at the time that the application was approved, or, for covered loans, at closing or account opening.

Paragraph 4(a)(22)

1. *Prepayment penalty term—not applicable.* Section 1003.4(a)(22) does not require financial institutions to report the term of any prepayment penalty for transactions not subject to Regulation Z, 12 CFR part 1026, such as loans or lines of credit made primarily for business or commercial purposes, or for reverse mortgages or purchased covered loans. In these cases, a financial institution complies with § 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction.

2. *Transactions for which no prepayment penalty exists.* For covered loans or applications that have no prepayment penalty, a financial institution complies with § 1003.4(a)(22) by reporting that the requirement is not applicable to the transaction. A financial institution may rely on the definitions and commentary to Regulation Z, 12 CFR 1026.32(b)(6)(i) or (ii) in determining whether the terms of a transaction contain a prepayment penalty.

Paragraph 4(a)(23)

1. *General.* For covered loans that are not purchased covered loans, § 1003.4(a)(23) requires a financial institution to report the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) relied on in making the credit decision. For example, if a financial institution calculated the applicant's or borrower's debt-to-income ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the debt-to-income ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(23) requires the financial institution to report the debt-to-income ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a debt-to-income ratio was one of multiple factors.* A financial institution relies on the ratio of the applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio) in making the credit decision if the debt-to-income ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the debt-to-income ratio was one of multiple factors in a financial institution's credit decision, the financial institution has relied on the debt-to-income ratio and complies with § 1003.4(a)(23) by reporting the debt-to-income ratio, even if the financial institution denied the application because one or more underwriting requirements other than the debt-to-income ratio were not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the applicant's total monthly debt to total monthly income (debt-to-income ratio). For example, if a file was closed for incompleteness and was so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made, the financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable, even if the financial institution had calculated the applicant's debt-to-income ratio.

4. *Transactions for which no debt-to-income ratio was relied on.* Section 1003.4(a)(23) does not require a financial institution to calculate the ratio of an applicant's or borrower's total monthly debt to total monthly income (debt-to-income ratio), nor does it require a financial institution to rely on an applicant's or borrower's debt-to-income ratio in making a credit decision. If a financial institution made a credit decision without relying on the applicant's or borrower's debt-to-income ratio, the financial institution complies with

§ 1003.4(a)(23) by reporting that the requirement is not applicable since no debt-to-income ratio was relied on in connection with the credit decision.

5. *Non-natural person.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when the applicant and co-applicant, if applicable, are not natural persons.

6. *Multifamily dwellings.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable for a covered loan secured by, or an application proposed to be secured by, a multifamily dwelling.

7. *Purchased covered loans.* A financial institution complies with § 1003.4(a)(23) by reporting that the requirement is not applicable when reporting a purchased covered loan.

Paragraph 4(a)(24)

1. *General.* Section 1003.4(a)(24) requires a financial institution to report, except for purchased covered loans, the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) relied on in making the credit decision. For example, if a financial institution calculated a combined loan-to-value ratio twice—once according to the financial institution's own requirements and once according to the requirements of a secondary market investor—and the financial institution relied on the combined loan-to-value ratio calculated according to the secondary market investor's requirements in making the credit decision, § 1003.4(a)(24) requires the financial institution to report the combined loan-to-value ratio calculated according to the requirements of the secondary market investor.

2. *Transactions for which a combined loan-to-value ratio was one of multiple factors.* A financial institution relies on the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio) in making the credit decision if the combined loan-to-value ratio was a factor in the credit decision even if it was not a dispositive factor. For example, if the combined loan-to-value ratio is one of multiple factors in a financial institution's credit decision, the financial institution has relied on the combined loan-to-value ratio and complies with § 1003.4(a)(24) by reporting the combined loan-to-value ratio, even if the financial institution denies the application because one or more underwriting requirements other than the combined loan-to-value ratio are not satisfied.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness, or if an application was withdrawn before a credit decision was made, a financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio). For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable, even if the financial institution had calculated a combined loan-to-value ratio.

4. *Transactions for which no combined loan-to-value ratio was relied on.* Section 1003.4(a)(24) does not require a financial institution to calculate the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio), nor does it require a financial institution to rely on a combined loan-to-value ratio in making a credit decision. If a financial institution makes a credit decision without relying on a combined loan-to-value ratio, the financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable since no combined loan-to-value ratio was relied on in making the credit decision.

5. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(24) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

Paragraph 4(a)(25)

1. *Amortization and maturity.* For a fully amortizing covered loan, the number of months after which the legal obligation matures is the number of months in the amortization schedule, ending with the final payment. Some covered loans do not fully amortize during the maturity term, such as covered loans with a balloon payment; such loans should still be reported using the maturity term rather than the amortization term, even in the case of covered loans that mature before fully amortizing but have reset options. For example, a 30-year fully amortizing covered loan would be reported with a term of ''360,'' while a five year balloon covered loan would be reported with a loan term of ''60.''

2. *Non-monthly repayment periods.* If a covered loan or application includes a schedule with repayment periods measured in a unit of time other than months, the financial institution should report the covered loan or application term using an equivalent number of whole months without regard for any remainder.

3. *Purchased loans.* For a covered loan that was purchased, a financial institution reports the number of months after which the legal obligation matures as measured from the covered loan's origination.

4. *Open-end line of credit.* For an open-end line of credit with a definite term, a financial institution reports the number of months from origination until the account termination date, including both the draw and repayment period.

5. *Loan or application without a definite term.* For a covered loan or application without a definite term, such as a reverse mortgage, a financial institution complies with § 1003.4(a)(25) by reporting that the requirement is not applicable.

Paragraph 4(a)(26)

1. *Types of introductory rates.* Section 1003.4(a)(26) requires a financial institution to report the number of months, or proposed number of months in the case of an application, from closing or account opening until the first date the interest rate may change. For example, assume an open-end line of credit contains an introductory or ''teaser'' interest rate for two months after the date of account opening, after which the interest rate may adjust. In this example, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''2.'' Section 1003.4(a)(26) requires a financial institution to report the number of months based on when the first interest rate adjustment may occur, even if an interest rate adjustment is not required to occur at that time and even if the rates that will apply, or the periods for which they will apply, are not known at closing or account opening. For example, if a closed-end mortgage loan with a 30-year term has an adjustable-rate product with an introductory interest rate for the first 60 months, after which the interest rate is permitted, but not required to vary, according to the terms of an index rate, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''60.'' Similarly, if a closed-end mortgage loan with a 30-year term is a step-rate product with an introductory interest rate for the first 24 months, after which the interest rate will increase to a different known interest rate for the next 36 months, the financial institution complies with § 1003.4(a)(26) by reporting the number of months as ''24.''

2. *Preferred rates.* Section 1003.4(a)(26) does not require reporting of introductory interest rate periods based on preferred rates unless the terms of the legal obligation provide that the preferred rate will expire at a certain defined date. Preferred rates include terms of the legal obligation that provide that the initial underlying rate is fixed but that it may increase or decrease upon the occurrence of some future event, such as an employee leaving the employ of the financial institution, the borrower closing an existing deposit account with the financial institution, or the borrower revoking an election to make automated payments. In these cases, because it is not known at the time of closing or account opening whether the future event will occur, and if so, when it will occur, § 1003.4(a)(26) does not require reporting of an introductory interest rate period.

3. *Loan or application with a fixed rate.* A financial institution complies with § 1003.4(a)(26) by reporting that the requirement is not applicable for a covered loan with a fixed rate or an application for a covered loan with a fixed rate.

4. *Purchased loan.* A financial institution complies with § 1003.4(a)(26) by reporting that requirement is not applicable when the covered loan is a purchased covered loan with a fixed rate.

Paragraph 4(a)(27)

1. *General.* Section 1003.4(a)(27) requires reporting of contractual features that would allow payments other than fully amortizing payments. Section 1003.4(a)(27) defines the

contractual features by reference to Regulation Z, 12 CFR part 1026, but without regard to whether the covered loan is consumer credit, as defined in § 1026.2(a)(12), is extended by a creditor, as defined in § 1026.2(a)(17), or is extended to a consumer, as defined in § 1026.2(a)(11), and without regard to whether the property is a dwelling as defined in § 1026.2(a)(19). For example, assume that a financial institution originates a business-purpose transaction that is exempt from Regulation Z pursuant to 12 CFR 1026.3(a)(1), to finance the purchase of a multifamily dwelling, and that there is a balloon payment, as defined by Regulation Z, 12 CFR 1026.18(s)(5)(i), at the end of the loan term. The multifamily dwelling is a dwelling under § 1003.2(f), but not under Regulation Z, 12 CFR 1026.2(a)(19). In this example, the financial institution should report the business-purpose transaction as having a balloon payment under § 1003.4(a)(27)(i), assuming the other requirements of this part are met. Aside from these distinctions, financial institutions may rely on the definitions and related commentary provided in the appropriate sections of Regulation Z referenced in § 1003.4(a)(27) of this part in determining whether the contractual feature should be reported.

Paragraph 4(a)(28).

1. *General.* A financial institution reports the property value relied on in making the credit decision. For example, if the institution relies on an appraisal or other valuation for the property in calculating the loan-to-value ratio, it reports that value; if the institution relies on the purchase price of the property in calculating the loan-to-value ratio, it reports that value.

2. *Multiple property values.* When a financial institution obtains two or more valuations of the property securing or proposed to secure the covered loan, the financial institution complies with § 1003.4(a)(28) by reporting the value relied on in making the credit decision. For example, when a financial institution obtains an appraisal, an automated valuation model report, and a broker price opinion with different values for the property, it reports the value relied on in making the credit decision. Section § 1003.4(a)(28) does not require a financial institution to use a particular property valuation method, but instead requires a financial institution to report the valuation relied on in making the credit decision.

3. *Transactions for which no credit decision was made.* If a file was closed for incompleteness or the application was withdrawn before a credit decision was made, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. For example, if a file is closed for incompleteness and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value. Similarly, if an application was withdrawn by the applicant before a credit decision was made and is so reported in accordance with § 1003.4(a)(8), the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable, even if the financial institution had obtained a property value.

4. *Transactions for which no property value was relied on.* Section 1003.4(a)(28) does not require a financial institution to obtain a property valuation, nor does it require a financial institution to rely on a property value in making a credit decision. If a financial institution makes a credit decision without relying on a property value, the financial institution complies with § 1003.4(a)(28) by reporting that the requirement is not applicable since no property value was relied on in making the credit decision.

Paragraph 4(a)(29)

1. *Classification under State law.* A financial institution should report a covered loan that is or would have been secured only by a manufactured home but not the land on which it is sited as secured by a manufactured home and not land, even if the manufactured home is considered real property under applicable State law.

2. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(29).

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home.

Paragraph 4(a)(30)

1. *Indirect land ownership.* Indirect land ownership can occur when the applicant or borrower is or will be a member of a resident-owned community structured as a housing cooperative in which the occupants own an entity that holds the underlying land of the manufactured home community. In such communities, the applicant or borrower may still have a lease and pay rent for the lot on which his or her manufactured home is or will be located, but the property interest type for such an arrangement should be reported as indirect ownership if the applicant is or will be a member of the cooperative that owns the underlying land of the manufactured home community. If an applicant resides or will reside in such a community but is not a member, the property interest type should be reported as a paid leasehold.

2. *Leasehold interest.* A leasehold interest could be formalized in a lease with a defined term and specified rent payments, or could arise as a tenancy at will through permission of a land owner without any written, formal arrangement. For example, assume a borrower will locate the manufactured home in a manufactured home community, has a written lease for a lot in that park, and the lease specifies rent payments. In this example, a financial institution complies with § 1003.4(a)(30) by reporting a paid leasehold. However, if instead the borrower will locate the manufactured home on land owned by a family member without a written lease and with no agreement as to rent payments, a financial institution complies with § 1003.4(a)(30) by reporting an unpaid leasehold.

3. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

4. *Manufactured home community.* A manufactured home community that is a multifamily dwelling is not considered a manufactured home for purposes of § 1003.4(a)(30).

5. *Direct ownership.* An applicant or borrower has a direct ownership interest in the land on which the dwelling is or is to be located when it has a more than possessory real property ownership interest in the land such as fee simple ownership.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable for a covered loan where the dwelling related to the property identified in § 1003.4(a)(9) is not a manufactured home.

Paragraph 4(a)(31)

1. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

2. *Manufactured home community.* For an application or covered loan secured by a manufactured home community, the financial institution should include in the number of individual dwelling units the total number of manufactured home sites that secure the loan and are available for occupancy, regardless of whether the sites are currently occupied or have manufactured homes currently attached. A financial institution may include in the number of individual dwelling units other units such as recreational vehicle pads, manager apartments, rental apartments, site-built homes or other rentable space that are ancillary to the operation of the secured property if it considers such units under its underwriting guidelines or the guidelines of an investor, or if it tracks the number of such units for its own internal purposes. For a loan secured by a single manufactured home that is or will be located in a manufactured home community, the financial institution should report one individual dwelling unit.

3. *Condominium and cooperative projects.* For a covered loan secured by a condominium or cooperative property, the financial institution reports the total number of individual dwelling units securing the covered loan or proposed to secure the covered loan in the case of an application. For example:

i. Assume that a loan is secured by the entirety of a cooperative property. The financial institution would report the number of individual dwelling units in the cooperative property.

ii. Assume that a covered loan is secured by 30 individual dwelling units in a condominium property that contains 100 individual dwelling units and that the loan is not exempt from Regulation C under § 1003.3(c)(3). The financial institution reports 30 individual dwelling units.

4. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by § 1003.4(a)(31). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

Paragraph 4(a)(32)

1. *Affordable housing income restrictions.* For purposes of § 1003.4(a)(32), affordable housing income-restricted units are individual dwelling units that have restrictions based on the income level of occupants pursuant to restrictive covenants encumbering the property. Such income levels are frequently expressed as a percentage of area median income by household size as established by the U.S. Department of Housing and Urban Development or another agency responsible for implementing the applicable affordable housing program. Such restrictions are frequently part of compliance with programs that provide public funds, special tax treatment, or density bonuses to encourage development or preservation of affordable housing. Such restrictions are frequently evidenced by a use agreement, regulatory agreement, land use restriction agreement, housing assistance payments contract, or similar agreement. Rent control or rent stabilization laws, and the acceptance by the owner or manager of a multifamily dwelling of Housing Choice Vouchers (24 CFR part 982) or other similar forms of portable housing assistance that are tied to an occupant and not an individual dwelling unit, are not affordable housing income-restricted dwelling units for purposes of § 1003.4(a)(32).

2. *Federal affordable housing sources.* Examples of Federal programs and funding sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32) include, but are not limited to:

i. Affordable housing programs pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

ii. Public housing (42 U.S.C. 1437a(b)(6));

iii. The HOME Investment Partnerships program (24 CFR part 92);

iv. The Community Development Block Grant program (24 CFR part 570);

v. Multifamily tax subsidy project funding through tax-exempt bonds or tax credits (26 U.S.C. 42; 26 U.S.C. 142(d));

vi. Project-based vouchers (24 CFR part 983);

vii. Federal Home Loan Bank affordable housing program funding (12 CFR part 1291); and

viii. Rural Housing Service multifamily housing loans and grants (7 CFR part 3560).

3. *State and local government affordable housing sources.* Examples of State and local sources that may result in individual dwelling units that are reportable under § 1003.4(a)(32) include, but are not limited to: State or local administration of Federal funds or programs; State or local funding programs for affordable housing or rental assistance, including programs operated by independent public authorities; inclusionary zoning laws; and tax abatement or tax increment financing contingent on affordable housing requirements.

4. *Multiple properties.* See comment 4(a)(9)–2 regarding transactions involving multiple properties with more than one property taken as security.

5. *Best information available.* A financial institution may rely on the best information readily available to the financial institution at the time final action is taken and on the financial institution's own procedures in reporting the information required by § 1003.4(a)(32). Information readily available could include, for example, information provided by an applicant that the financial institution reasonably believes, information contained in a property valuation or inspection, or information obtained from public records.

6. *Scope of requirement.* A financial institution reports that the requirement is not applicable if the property securing the covered loan or, in the case of an application, proposed to secure the covered loan is not a multifamily dwelling.

Paragraph 4(a)(33)

1. *Agents.* If a financial institution is reporting actions taken by its agent consistent with comment 4(a)–4, the agent is not considered the financial institution for the purposes of § 1003.4(a)(33). For example, assume that an applicant submitted an application to Financial Institution A, and Financial Institution A made the credit decision acting as Financial Institution B's agent under State law. A covered loan was originated and the obligation arising from a covered loan was initially payable to Financial Institution A. Financial Institution B purchased the loan. Financial Institution B reports the origination and not the purchase, and indicates that the application was not submitted directly to the financial institution and that the transaction was not initially payable to the financial institution.

Paragraph 4(a)(33)(i)

1. *General.* Section 4(a)(33)(i) requires a financial institution to indicate whether the applicant or borrower submitted the application directly to the financial institution that is reporting the covered loan or application. The following scenarios demonstrate whether an application was submitted directly to the financial institution that is reporting the covered loan or application.

i. The application was submitted directly to the financial institution if the mortgage loan originator identified pursuant to § 1003.4(a)(34) was an employee of the reporting financial institution when the originator performed the origination activities for the covered loan or application that is being reported.

ii. The application was also submitted directly to the financial institution reporting the covered loan or application if the reporting financial institution directed the applicant to a third-party agent (*e.g.,* a credit union service organization) that performed loan origination activities on behalf of the financial institution and did not assist the applicant with applying for covered loans with other institutions.

iii. If an applicant contacted and completed an application with a broker or correspondent that forwarded the application to a financial institution for approval, an application was not submitted to the financial institution.

Paragraph 4(a)(33)(ii)

1. *General.* Section 1003.4(a)(33)(ii) requires financial institutions to report whether the obligation arising from a covered loan was or, in the case of an application, would have been initially payable to the institution. An obligation is initially payable to the institution if the obligation is initially payable either on the face of the note or contract to the financial institution that is reporting the covered loan or application. For example, if a financial institution reported an origination of a covered loan that it approved prior to closing, that closed in the name of a third-party, such as a correspondent lender, and that the financial institution purchased after closing, the covered loan was not initially payable to the financial institution.

2. *Applications.* A financial institution complies with § 1003.4(a)(33)(ii) by reporting that the requirement is not applicable if the institution had not determined whether the covered loan would have been initially payable to the institution reporting the application when the application was withdrawn, denied, or closed for incompleteness.

Paragraph 4(a)(34)

1. *NMLSR ID.* Section 1003.4(a)(34) requires a financial institution to report the Nationwide Mortgage Licensing System and Registry unique identifier (NMLSR ID) for the mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, as applicable. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, title V of the Housing and Economic Recovery Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5101 *et seq.,* and its implementing regulations (12 CFR part 1007 and 12 CFR part 1008).

2. *Mortgage loan originator without NMLSR ID.* An NMLSR ID for the mortgage loan originator is not required by § 1003.4(a)(34) to be reported by a financial institution if the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID. For example, certain individual mortgage loan originators may not be required to obtain an NMLSR ID for the particular transaction being reported by the financial institution, such as a commercial loan. However, some mortgage loan originators may have obtained an NMLSR ID even if they are not required to obtain one for that particular transaction. If a mortgage loan originator has been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting the mortgage loan originator's NMLSR ID regardless of

whether the mortgage loan originator is required to obtain an NMLSR ID for the particular transaction being reported by the financial institution. In the event that the mortgage loan originator is not required to obtain and has not been assigned an NMLSR ID, a financial institution complies with § 1003.4(a)(34) by reporting that the requirement is not applicable.

3. *Multiple mortgage loan originators.* If more than one individual associated with a covered loan or application meets the definition of a mortgage loan originator, as defined in Regulation G, 12 CFR 1007.102, or Regulation H, 12 CFR 1008.23, a financial institution complies with § 1003.4(a)(34) by reporting the NMLSR ID of the individual mortgage loan originator with primary responsibility for the transaction as of the date of action taken pursuant to § 1003.4(a)(8)(ii). A financial institution that establishes and follows a reasonable, written policy for determining which individual mortgage loan originator has primary responsibility for the reported transaction as of the date of action taken complies with § 1003.4(a)(34).

Paragraph 4(a)(35)

1. *Automated underwriting system data—general.* A financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the automated underwriting system (AUS) used by the financial institution to evaluate the application and the result generated by that AUS. The following scenarios illustrate when a financial institution reports the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS.

i. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS used by the financial institution to evaluate the application and the result generated by that system, regardless of whether the AUS was used in its underwriting process. For example, if a financial institution uses an AUS to evaluate an application prior to submitting the application through its underwriting process, the financial institution complies with § 1003.4(a)(35) by reporting the name of the AUS it used to evaluate the application and the result generated by that system.

ii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan in its portfolio or sell the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and intends to sell the covered loan to that securitizer but ultimately does not sell the covered loan and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system. Similarly, if a financial institution uses an AUS developed by a securitizer to evaluate an application to determine whether to originate the covered loan but does not intend to sell the covered loan to that securitizer and instead holds the covered loan in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iii. A financial institution that uses an AUS, as defined in § 1003.4(a)(35)(ii), that is developed by a securitizer to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the securitizer intends to hold the covered loan it purchased from the financial institution in its portfolio or securitize the covered loan. For example, if a financial institution uses an AUS developed by a securitizer to evaluate an application and the financial institution sells the covered loan to that securitizer but the securitizer holds the covered loan it purchased in its portfolio, the financial institution complies with § 1003.4(a)(35) by reporting the name of the securitizer's AUS that the institution used to evaluate the application and the result generated by that system.

iv. A financial institution, which is also a securitizer, that uses its own AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application, must report the name of the AUS it used to evaluate the application and the result generated by that system, regardless of whether the financial institution intends to hold the covered loan it originates in its portfolio, purchase the covered loan, or securitize the covered loan. For example, if a financial institution, which is also a securitizer, has developed its own AUS and uses that AUS to evaluate an application that it intends to originate and hold in its portfolio and not purchase or securitize the covered loan, the financial institution complies with § 1003.4(a)(35) by reporting the name of its AUS that it used to evaluate the application and the result generated by that system.

2. *Definition of automated underwriting system.* A financial institution must report the information required by § 1003.4(a)(35)(i) if the financial institution uses an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii), to evaluate an application. In order for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must be an electronic tool that has been developed by a securitizer, Federal government insurer, or a Federal government guarantor. For example, if a financial institution has developed its own proprietary system that it uses to evaluate an application and the financial institution is also a securitizer, then the financial institution complies with § 1003.4(a)(35) by reporting the name of that system and the result generated by that system. On the other hand, if a financial institution has developed its own proprietary system that it uses to evaluate an application but the financial institution is not a securitizer, then the financial institution is not required by § 1003.4(a)(35) to report the use of that system and the result generated by that system. In addition, in order for an AUS to be covered by the definition in § 1003.4(a)(35)(ii), the system must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used to evaluate the application. For example, if a system is an electronic tool that provides a determination of the eligibility of the covered loan to be originated, purchased, insured, or guaranteed by the securitizer, Federal government insurer, or Federal government guarantor that developed the system being used by a financial institution to evaluate the application, but the system does not also provide an assessment of the creditworthiness of the applicant—such as, an evaluation of the applicant's income, debt, and credit history—then that system does not qualify as an AUS, as defined in § 1003.4(a)(35)(ii). A financial institution that uses a system that is not an AUS, as defined in § 1003.4(a)(35)(ii), to evaluate an application does not report the information required by § 1003.4(a)(35)(i).

3. *Reporting automated underwriting system data—multiple results.* When a financial institution uses one or more automated underwriting systems (AUS) to evaluate the application and the system or systems generate two or more results, the financial institution complies with § 1003.4(a)(35) by reporting, except for purchased covered loans, the name of the AUS used by the financial institution to evaluate the application and the result generated by that AUS as determined by the following principles. To determine what AUS (or AUSs) and result (or results) to report under § 1003.4(a)(35), a financial institution follows each of the principles that is applicable to the application in question, in the order in which they are set forth below.

i. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution complies with § 1003.4(a)(35) by reporting that AUS name and result. For example, if a financial institution evaluates an application using the Federal Housing Administration's (FHA) Technology Open to Approved Lenders (TOTAL) Scorecard and subsequently evaluates the application with an AUS used to determine eligibility for a non-FHA loan, but ultimately originates an FHA loan, the financial institution complies with § 1003.4(a)(35) by reporting TOTAL Scorecard and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the loan type reported pursuant to § 1003.4(a)(2), the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.ii.

ii. If a financial institution obtains two or more AUS results and the AUS generating one of those results corresponds to the purchaser, insurer, or guarantor, if any, the financial institution complies with § 1003.4(a)(35) by reporting that AUS name

and result. For example, if a financial institution evaluates an application with the AUS of Securitizer A and subsequently evaluates the application with the AUS of Securitizer B, but the financial institution ultimately originates a covered loan that it sells within the same calendar year to Securitizer A, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the result generated by that system. If a financial institution obtains two or more AUS results and more than one of those AUS results is generated by a system that corresponds to the purchaser, insurer, or guarantor, if any, the financial institution identifies which AUS result should be reported by following the principle set forth below in comment 4(a)(35)–3.iii.

iii. If a financial institution obtains two or more AUS results and none of the systems generating those results correspond to the purchaser, insurer, or guarantor, if any, or the financial institution is following this principle because more than one AUS result is generated by a system that corresponds to either the loan type or the purchaser, insurer, or guarantor, the financial institution complies with § 1003.4(a)(35) by reporting the AUS result generated closest in time to the credit decision and the name of the AUS that generated that result. For example, if a financial institution evaluates an application with the AUS of Securitizer A, subsequently again evaluates the application with Securitizer A's AUS, the financial institution complies with § 1003.4(a)(35) by reporting the name of Securitizer A's AUS and the second AUS result. Similarly, if a financial institution obtains a result from an AUS that requires the financial institution to underwrite the loan manually, but the financial institution subsequently processes the application through a different AUS that also generates a result, the financial institution complies with § 1003.4(a)(35) by reporting the name of the second AUS that it used to evaluate the application and the AUS result generated by that system.

iv. If a financial institution obtains two or more AUS results at the same time and the principles in comment 4(a)(35)–3.i through .iii do not apply, the financial institution complies with § 1003.4(a)(35) by reporting the name of all of the AUSs used by the financial institution to evaluate the application and the results generated by each of those systems. For example, if a financial institution simultaneously evaluates an application with the AUS of Securitizer A and the AUS of Securitizer B, the financial institution complies with § 1003.4(a)(35) by reporting the name of both Securitizer A's AUS and Securitizer B's AUS and the results generated by each of those systems. In any event, however, the financial institution does not report more than five AUSs and five results. If more than five AUSs and five results meet the criteria in this principle, the financial institution complies with § 1003.4(a)(35) by choosing any five among them to report.

4. *Transactions for which an automated underwriting system was not used to evaluate the application.* Section 1003.4(a)(35) does not require a financial institution to evaluate an application using an automated underwriting system (AUS), as defined in § 1003.4(a)(35)(ii). For example, if a financial institution only manually underwrites an application and does not use an AUS to evaluate the application, the financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable since an AUS was not used to evaluate the application.

5. *Purchased covered loan.* A financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable when the covered loan is a purchased covered loan.

6. *Non-natural person.* When the applicant and co-applicant, if applicable, are not natural persons, a financial institution complies with § 1003.4(a)(35) by reporting that the requirement is not applicable.

Paragraph 4(a)(37)

1. *Open-end line of credit.* Section 1003.4(a)(37) requires a financial institution to identify whether the covered loan or the application is for an open-end line of credit. See comments 2(o)–1 and –2 for a discussion of open-end line of credit and extension of credit.

Paragraph 4(a)(38)

1. *Primary purpose.* Section 1003.4(a)(38) requires a financial institution to identify whether the covered loan is, or the application is for a covered loan that will be, made primarily for a business or commercial purpose. See comment 3(c)(10)–2 for a discussion of how to determine the primary purpose of the transaction and the standard applicable to financial institution's determination of the primary purpose of the transaction. See comments 3(c)(10)–3 and –4 for examples of excluded and reportable business- or commercial-purpose transactions.

4(f) Quarterly Recording of Data

1. *General.* Section 1003.4(f) requires a financial institution to record the data collected pursuant to § 1003.4 on a loan/application register within 30 calendar days after the end of the calendar quarter in which final action is taken. Section 1003.4(f) does not require a financial institution to record data on a single loan/application register on a quarterly basis. Rather, for purposes of § 1003.4(f), a financial institution may record data on a single loan/application register or separately for different branches or different loan types (such as home purchase or home improvement loans, or loans on multifamily dwellings).

2. *Agency requirements.* Certain State or Federal regulations may require a financial institution to record its data more frequently than is required under Regulation C.

3. *Form of quarterly records.* A financial institution may maintain the records required by § 1003.4(f) in electronic or any other format, provided the institution can make the information available to its regulatory agency in a timely manner upon request.

Section 1003.5—Disclosure and Reporting

5(a) Reporting to Agency

1. [Reserved]
2. [Reserved]
3. [Reserved]
4. [Reserved]
5. *Change in appropriate Federal agency.* If the appropriate Federal agency for a covered institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must report data to the new appropriate Federal agency beginning with the year of the change.
6. *Subsidiaries.* An institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest that is greater than 50 percent of the institution.
7. *Transmittal sheet—additional data submissions.* If an additional data submission becomes necessary (for example, because the institution discovers that data were omitted from the initial submission, or because revisions are called for), that submission must be accompanied by a transmittal sheet.
8. *Transmittal sheet—revisions or deletions.* If a data submission involves revisions or deletions of previously submitted data, it must state the total of all line entries contained in that submission, including both those representing revisions or deletions of previously submitted entries, and those that are being resubmitted unchanged or are being submitted for the first time. Depository institutions must provide a list of the MSAs or Metropolitan Divisions in which they have home or branch offices.

5(b) Disclosure Statement

1. *Business day.* For purposes of § 1003.5(b), a business day is any calendar day other than a Saturday, Sunday, or legal public holiday.

2. *Format of notice.* A financial institution may make the written notice required under § 1003.5(b)(2) available in paper or electronic form.

3. *Notice—suggested text.* A financial institution may use any text that meets the requirements of § 1003.5(b)(2). The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site (*www.consumerfinance.gov/hmda*). *HMDA data for many other financial institutions are also available at this Web site.*

4. *Combined notice.* A financial institution may use the same notice to satisfy the requirements of both § 1003.5(b)(2) and § 1003.5(c).

5(c) Modified loan/application Register

1. *Format of notice.* A financial institution may make the written notice required under § 1003.5(c)(1) available in paper or electronic form.

2. *Notice—suggested text.* A financial institution may use any text that meets the requirements of § 1003.5(c)(1). The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. These data are available online at the Consumer Financial Protection Bureau's Web site (*www.consumerfinance.gov/hmda*). *HMDA data for many other financial institutions are also available at this Web site.*

3. *Combined notice.* A financial institution may use the same notice to satisfy the requirements of both § 1003.5(c) and § 1003.5(b)(2).

5(e) Posted Notice of Availability of Data

1. *Posted notice—suggested text.* A financial institution may post any text that meets the requirements of § 1003.5(e). The Bureau or other appropriate Federal agency for a financial institution may provide a notice that the institution can post to inform the public of the availability of its HMDA data, or an institution may create its own notice. The following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available online for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, age, and income of applicants and borrowers; and information about loan approvals and denials. HMDA data for many other financial institutions are also available online. For more information, visit the Consumer Financial Protection Bureau's Web site (*www.consumerfinance.gov/hmda*).

Section 1003.6—Enforcement

6(b) Bona Fide Errors

1. *Bona fide error—information from third parties.* An institution that obtains the property-location information for applications and loans from third parties (such as appraisers or vendors of ''geocoding'' services) is responsible for ensuring that the information reported on its HMDA/LAR is correct.

■ 16. Effective January 1, 2019, in Supplement I to Part 1003:

a. Under the heading *Section 1003.5—Disclosure and Reporting,* under the subheading *5(a) Reporting to Agency,* paragraphs 1, 2, 3, and 4 are added, paragraph 5 is revised, and paragraphs 6, 7, and 8 are removed;

b. Under the heading *Section 1003.6—Enforcement,* under the subheading *6(b) Bona Fide Errors,* paragraph 1 is revised.

The additions and revisions read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.5—Disclosure and Reporting

5(a) Reporting to Agency

1. *Quarterly reporting—coverage.* i. Section 1003.5(a)(1)(ii) requires that, within 60 calendar days after the end of each calendar quarter except the fourth quarter, a financial institution that reported for the preceding calendar year at least 60,000 covered loans and applications, combined, excluding purchased covered loans, must submit its loan/application register containing all data required to be recorded for that quarter pursuant to § 1003.4(f). For example, if for calendar year 2019 Financial Institution A reports 60,000 covered loans, excluding purchased covered loans, it must comply with § 1003.5(a)(1)(ii) in calendar year 2020. Similarly, if for calendar year 2019 Financial Institution A reports 20,000 applications and 40,000 covered loans, combined, excluding purchased covered loans, it must comply with § 1003.5(a)(1)(ii) in calendar year 2020. If for calendar year 2020 Financial Institution A reports fewer than 60,000 covered loans and applications, combined, excluding purchased covered loans, it is not required to comply with § 1003.5(a)(1)(ii) in calendar year 2021.

ii. In the calendar year of a merger or acquisition, the surviving or newly formed financial institution is required to comply with § 1003.5(a)(1)(ii), effective the date of the merger or acquisition, if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2020. Financial Institution A reports 40,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 21,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution C is required to comply with § 1003.5(a)(1)(ii) effective the date of the merger. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in 2020. Financial Institution A reports 58,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution B reports 3,000 covered loans and applications, combined, excluding purchased covered loans, for 2019 for the branch office acquired by Financial Institution A. Financial Institution A is required to comply with § 1003.5(a)(1)(ii) in 2020 effective the date of the branch acquisition.

iii. In the calendar year following a merger or acquisition, the surviving or newly formed financial institution is required to comply with § 1003.5(a)(1)(ii) if a combined total of at least 60,000 covered loans and applications, combined, excluding purchased covered loans, is reported for the preceding calendar year by or for the surviving or newly formed financial institution and each financial institution or branch office merged or acquired. For example, Financial Institution A and Financial Institution B merge to form Financial Institution C in 2019. Financial Institution C reports 21,000 covered loans and applications, combined, excluding purchased covered loans, each for Financial Institution A, B, and C for 2019, for a combined total of 63,000 covered loans and applications reported, excluding purchased covered loans. Financial Institution C is required to comply with § 1003.5(a)(1)(ii) in 2020. Similarly, for example, Financial Institution A acquires a branch office of Financial Institution B in 2019. Financial Institution A reports 58,000 covered loans and applications, combined, excluding purchased covered loans, for 2019. Financial Institution A or B reports 3,000 covered loans and applications, combined, excluding purchased covered loans, for 2019 for the branch office acquired by Financial Institution A. Financial Institution A is required to comply with § 1003.5(a)(1)(ii) in 2020.

2. *Change in appropriate Federal agency.* If the appropriate Federal agency for a financial institution changes (as a consequence of a merger or a change in the institution's charter, for example), the institution must identify its new appropriate Federal agency in its annual submission of data pursuant to § 1003.5(a)(1)(i) for the year of the change. For example, if an institution's appropriate Federal agency changes in February 2018, it must identify its new appropriate Federal agency beginning with the annual submission of its 2018 data by March 1, 2019 pursuant to § 1003.5(a)(1)(i). For an institution required to comply with § 1003.5(a)(1)(ii), the institution also must identify its new appropriate Federal agency in its quarterly submission of data pursuant to § 1003.5(a)(1)(ii) beginning with its submission for the quarter of the change, unless the change occurs during the fourth quarter. For example, if the appropriate Federal agency for an institution required to comply with § 1003.5(a)(1)(ii) changes during February 2020, the institution must identify its new appropriate Federal agency beginning with its quarterly submission pursuant to § 1003.5(a)(1)(ii) for the first quarter of 2020. If the appropriate Federal agency for an institution required to comply with § 1003.5(a)(1)(ii) changes during December 2020, the institution must identify its new appropriate Federal agency beginning with the annual submission of its 2020 data by March 1, 2021 pursuant to § 1003.5(a)(1)(i).

3. *Subsidiaries.* A financial institution is a subsidiary of a bank or savings association (for purposes of reporting HMDA data to the same agency as the parent) if the bank or savings association holds or controls an ownership interest in the institution that is greater than 50 percent.

4. *Retention.* A financial institution may satisfy the requirement under § 1003.5(a)(1)(i) that it retain a copy of its submitted annual loan/application register for three years by retaining a copy of the annual loan/application register in either electronic or paper form.

5. *Federal Taxpayer Identification Number.* Section 1003.5(a)(3) requires a financial institution to provide its Federal Taxpayer Identification Number with its data submission. If a financial institution obtains a new Federal Taxpayer Identification

Number, it should provide the new number in its subsequent data submission. For example, if two financial institutions that previously reported HMDA data under this part merge and the surviving institution retained its Legal Entity Identifier but obtained a new Federal Taxpayer Identification Number, then the surviving institution should report the new Federal Taxpayer Identification Number with its HMDA data submission.

* * * * *

Section 1003.6—Enforcement

6(b) Bona Fide Errors

1. *Information from third parties.* Section 1003.6(b) provides that an error in compiling or recording data for a covered loan or application is not a violation of the Act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such an error. A financial institution that obtains the required data, such as property-location information, from third parties is responsible for ensuring that the information reported pursuant to § 1003.5 is correct.

Dated: October 13, 2015.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2015–26607 Filed 10–27–15; 8:45 am]

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Establish Fees for Funding Portals; Notice of Filing of a Proposed Rule Change To Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518; Notices

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76238; File No. SR–FINRA–2015–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Establish Fees for Funding Portals

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Section 15 of Schedule A to the FINRA By-Laws (''Section 15'') governing fees for funding portals that are FINRA members.

Below is the text of the proposed rule change. Proposed new language is in italics.

* * * * *

BY-LAWS OF THE CORPORATION

* * * * *

SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

Section 1 through Section 14 No Change.

Section 15—Funding Portal Member Fees

(a) FINRA shall, in accordance with this section, collect fees that are designed to recover the costs to FINRA of the supervision and regulation of funding portal members, including the membership process and performing examinations, policy, rulemaking, interpretive and enforcement activities. FINRA shall periodically review funding portal fee revenues in conjunction with these costs to determine the applicable fees and rates. FINRA shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b)(1) Each funding portal applicant for membership shall be assessed an application fee of $2,700 at the time Form FP–NMA is filed.

(b)(2) Each funding portal applicant for approval of a change in ownership or control shall be assessed an application fee of $500 at the time Form FP–CMA is filed.

(b)(3) If an application pursuant to paragraph (b)(1) or (b)(2) is rejected as incomplete or is withdrawn by the funding portal applicant in accordance with Funding Portal Rule 110(a)(5) or (a)(7), the application fee shall be refunded less $250, which shall be retained by FINRA as a processing fee.

(c)(1) Each funding portal member shall pay an annual gross income assessment determined in accordance with Section 1(c) of this Schedule A. Gross revenue is defined for assessment purposes as gross revenue as reported on Form FP—Statement of Revenue.

(c)(2) The annual fee of a funding portal that is not a member throughout FINRA's full calendar year from January 1 to December 31 shall be based upon the number of quarter years of membership. The proration for a new funding portal member shall include the quarter year in which the funding portal member is admitted to membership. The proration for a funding portal member that withdraws from membership shall include the quarter year in which the funding portal member's withdrawal from membership is effective.

(c)(3) A funding portal member that is a successor organization to a previous funding portal member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Whether a funding portal member is the successor organization to a previous funding portal member or members shall be determined by FINRA upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A funding portal member that has simply acquired the personnel and offices of another funding portal member under circumstances that do not constitute the funding portal member a successor organization shall not be required to assume the unpaid assessments of the other member.

(d) A nonresident funding portal member shall reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the District Office of appropriate jurisdiction.

(e) FINRA shall assess each funding portal member a fee of $100 on the first day and $25 for each subsequent day, up to a maximum of $1,575, that a new disclosure event or a change in the status of a previously reported matter is not timely filed pursuant to Funding Portal Rule 800(b)(2).

(f)(1) A funding portal member shall pay a fee of $1,500 at the time that it files an application to initiate eligibility proceedings pursuant to Funding Portal Rule 900(b). Any funding portal member whose application results in a full hearing for eligibility in FINRA pursuant to Funding Portal Rule 900(b) shall pay to FINRA an additional fee of $2,500.

(f)(2) A funding portal member that continues to associate with any individual subject to disqualification or otherwise ineligible from association with a member shall pay annually to FINRA a fee of $1,500 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

(g) A funding portal member shall pay $15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the member, or $30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints.

(h) Request for Data and Publications. Where there is no provision elsewhere in the By-Laws for specific fees, the corporation may impose and collect compensatory charges for data from its records or for its publications.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Title III of the Jumpstart Our Business Startups (''JOBS'') Act,[5] enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through ''crowdfunding.''[6] Under Section 302 of the JOBS Act, a crowdfunding intermediary that engages in crowdfunding on behalf of issuers relying on the JOBS Act's ''crowdfunding exemption''[7] is required to register with the SEC as a ''funding portal''[8] or broker and to register with an applicable self-regulatory organization.[9]

In October 2013, the SEC proposed rules to require registration of funding portals and to implement the provisions of Title III of the JOBS Act.[10] Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if adopted by the SEC and to apply for FINRA membership. Section 3(h)(2) of the Act,[11] as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals. FINRA has submitted a companion filing to adopt the Funding Portal Rules and related forms.[12] This proposed rule change would adopt the fees applicable to funding portal members. FINRA has written the proposed rule change specifically for funding portals.

Proposed Funding Portal Rule 100 provides in part that ''All funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws and FINRA Regulation By-Laws, unless the context requires otherwise, and the Funding Portal Rules.'' Member regulatory fees are set forth in Schedule A to the By-Laws of the Corporation. FINRA proposes to amend Schedule A by adding Section 15, Funding Portal Member Fees.

Many of the fees charged to broker-dealer members pursuant to Schedule A to the By-Laws have no application to funding portal members due to the limited scope of funding portal activities.[13] Proposed Section 15, Funding Portal Fees, would establish the fees described below for funding portals that are FINRA members.

Initial Membership Application

The proposed rule change would impose a membership application fee of $2,700 charged at the time Form FP–NMA (new member application) is filed pursuant to proposed Funding Portal Rule 110(a)(3). These fees reflect the anticipated resource demands associated with processing and reviewing funding portal membership applications to determine whether the applicant meets the standards for membership set forth in proposed Funding Portal Rule 110.

Approval of Change in Ownership or Control

The proposed rule change would impose a continuing membership application fee of $500 charged at the time Form FP–CMA (continuing membership application) is filed pursuant to proposed Funding Portal Rule 110(a)(4). Proposed Funding Portal Rule 110(a)(4) provides that a funding portal member must file an application for approval of specified changes in ownership or control. The membership program incurs costs in reviewing continuing membership application materials and assessing whether the application meets the required standards set forth in proposed Funding Portal Rule 110.

Refunds for Incomplete or Withdrawn Applications

If an application on proposed Form FP–NMA or Form FP–CMA is rejected as incomplete within 14 days in accordance with proposed Funding Portal Rule 110(a)(5) or withdrawn by the applicant within 14 days in accordance with proposed Funding Portal Rule 110(a)(7), the application fee would be refunded less $250, which would be retained by FINRA as a processing fee.

Gross Income Assessment

FINRA's gross income assessment is a key element of its primary pricing structure. The fee is used to fund FINRA's regulatory activities, including its examination and enforcement programs. Section 1(c) of Schedule A of the By-Laws establishes a seven-tier rate structure under which each member pays a gross income assessment. Section 15 would impose this requirement on funding portal members. Under this rate structure, a funding portal with annual gross revenue of $1 million or less would pay a $1,200 annual fee. As proposed by FINRA, funding portals would be required to report their gross revenue on Form FP-Statement of Revenue.[14]

Nonresident Funding Portals

Section 15 would include a provision similar to NASD Rule 1090(b), and would require nonresident funding portals to reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant

[5] Pub. L. 112–106, 126 Stat. 306 (2012).

[6] Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.

[7] *See* new Section 4(a)(6) of the Securities Act of 1933 (the ''Securities Act'') (15 U.S.C. 77d(a)(6)), as amended by the JOBS Act. The crowdfunding exemption creates an exemption from registration under the Securities Act for securities offered by issuers pursuant to Title III of the JOBS Act.

[8] Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)), as amended by Title III of the JOBS Act, provides that the term ''funding portal'' means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)), that does not: (1) Offer investment advice or recommendations; (2) solicit purchases, sales, or offers to buy the securities offered or displayed on its Web site or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its Web site or portal; (4) hold, manage, possess, or otherwise handle investor funds or securities; or (5) engage in such other activities as the Commission, by rule, determines appropriate.

[9] *See* Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d–1(a)(1) and (2)).

[10] *See* Securities Exchange Act Release No. 70741 (October 23, 2013), 78 FR 66428 (November 5, 2013) (Crowdfunding; Proposed Rules) (the ''Regulation Crowdfunding Proposal''). The SEC's proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A (15 U.S.C. 78*o*–3). FINRA is the only registered national securities association.

[11] 15 U.S.C. 78c(h)(2).

[12] Specifically, FINRA has submitted a companion filing to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the ''Funding Portal Rules''), and related forms (Form FP–NMA, Form FP–CMA, Funding Portal Rule 300(c) Form, and Form FP-Statement of Revenue), regarding the regulation of funding portal member activities. *See* SR–FINRA–2015–040.

[13] *See, e.g.,* Schedule A, Section 1(b) (Trading Activity Fees), Section 3 (Regulatory Transaction Fees), Section 4(a) (Branch Office Fees), and Sections 4(b) and 4(c) (Registration and Testing Fees).

[14] Article VI, Section 2 of FINRA's By-laws provides that ''Each member, issuer, or other person shall promptly furnish all information or reports requested by the Corporation in connection with the determination of the amount of admission fees, dues, assessments, or other charges.'' FINRA has proposed that funding portal members be required to submit Form FP-Statement of Revenue each year. *See* note 12 *supra.*

from the District Office of appropriate jurisdiction.

Late Filings

Pursuant to proposed Funding Portal Rule 800(b)(2), funding portals would be required to keep statutory disqualification information current and to update the information promptly, but in any event not later than 10 days following any change in such information. Section 15 would assess a funding portal member a fee of $100 on the first day and $25 for each subsequent day, up to a maximum of $1,575, if statutory disqualification information is not provided or updated pursuant to proposed Funding Portal Rule 800(b)(2) within the prescribed 10 days.[15] FINRA proposes to impose this late fee, which is based on existing Section 4(h) of Schedule A of the By-Laws, as an additional mechanism to help ensure that funding portal members make required disclosures under proposed Funding Portal Rule 800(b)(2) in a timely manner.[16] FINRA also may bring disciplinary actions for failure to timely file or update the required disclosures under proposed Funding Portal Rule 800(b)(2), and would exercise discretion to bring such actions based on the facts and circumstances of individual cases notwithstanding the establishment of the late fee.

Relief From Statutory Disqualification or Other Ineligibility Provisions

Section 15 would impose a fee of $1,500 upon filing of an application by a funding portal to continue to employ a person that is subject to a statutory disqualification or is otherwise ineligible under FINRA rules from association with the funding portal. Any funding portal whose application results in a full hearing for eligibility pursuant to Funding Portal Rule 900(b) also would have to pay FINRA an additional fee of $2,500. In addition, Section 15 would provide that any portal that continues to employ as an associated person any individual subject to disqualification shall pay FINRA an annual fee of $1,500 when the individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000 when the individual is classified as a Tier 2 statutorily disqualified individual. The purpose of these fees is to assist FINRA in recovering the costs associated with processing applications submitted by firms seeking to associate with persons subject to a statutory or other disqualification.[17] Moreover, the proposed rule change would impose an annual fee on funding portal members that are approved to associate with an individual that is subject to a statutory disqualification, in light of the additional costs FINRA incurs for related oversight and examinations. For purposes of oversight, persons subject to a statutory disqualification are classified into one of three tiers, and the level of continuing examination varies among the tiers.

Fingerprint Fees

Section 15 would provide that each funding portal member shall pay $15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the funding portal member, or $30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints. FINRA processes fingerprints submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to SEA Section 17(f)(2) (15 U.S.C. 78q(f)(2)) and SEA Rule 17f–2 (17 CFR 240.17f–2). Proposed Regulation Crowdfunding provides that associated persons of intermediaries engaging in transactions in reliance on Securities Act Section 4(a)(6) must comply with SEA Rule 17f–2, relating to the fingerprinting of securities industry personnel.[18]

Data and Publications

Section 15 would provide that if there is no provision in the By-Laws for specific fees, FINRA may collect compensatory charges for data from its records or for its publications. This provision would be identical to Section 10 of Schedule A of the By-Laws, applicable to broker-dealer members.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be the implementation date of FINRA's proposed Funding Portal Rules, in whole or in part.[19]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[20] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable based on the limited permissible activities of funding portal members, the nature and scope of FINRA's regulatory program that will apply to such members, and the related estimated costs of establishing and maintaining the program. The proposed fees also would contribute to the general funding of FINRA's overall regulatory program and serve to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities.

FINRA also believes that the proposed fees are equitably allocated among funding portal members and funding portal applicants for membership. All funding portal members would incur the same proposed fee for membership and continuing membership applications, with both fees being lower than the fees charged to broker-dealer members in light of the limited activities of funding portal members and the streamlined application forms. In contrast, the proposed gross income assessment would be calculated using the same rate structure used for broker-dealer members, with those funding portal members having a higher annual gross income paying a larger assessment for regulatory purposes. As further discussed below, the proposed rule change also would impose late filing fees, fees related to eligibility proceedings and examinations of statutorily disqualified persons, and fingerprinting processing fees that are identical to those charged to broker-dealer members.

[15] Pursuant to proposed Funding Portal Rule 300(c) (Reporting Requirements), funding portal members also would be required to file a Funding Portal Rule 300(c) Form within 30 calendar days of specified disclosure events, including specified statutory disqualifications. The proposed rule change, however, would not impose a late filing fee on filings pursuant to Funding Portal Rule 300(c).

[16] FINRA recognizes that funding portal members may be prevented from filing timely disclosures if their associated persons fail to advise them of some events resulting in a statutory disqualification to which the associated persons, and not the members, are privy. In such cases, FINRA will consider the facts and circumstances in determining whether it is appropriate to impose the late fee.

[17] FINRA has proposed to adopt Funding Portal Rule 900(b), which sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws, and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. *See* note 12 *supra.*

[18] *See* Regulation Crowdfunding Proposal at 78 FR 66507.

[19] *See* note 12 *supra.*

[20] 15 U.S.C. 78*o*–3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the fees as set forth in this proposed rule change are reasonable based on the limited permissible activities of funding portal members, the nature and scope of FINRA's regulatory program that will apply to such members, and the related estimated costs of establishing and maintaining the program. Because funding portals are entities newly-created by the JOBS Act, FINRA has yet to implement its proposed regulatory program for these entities. As such, the proposed rule change reflects FINRA's efforts to estimate the costs of funding portal oversight and to recover those incremental costs.[21]

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rulemaking, the regulatory objective of the rulemaking, the economic baseline of analysis, and the economic impacts.

1. Need for the Rules

Section 3(h)(2) of the Exchange Act,[22] as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals.

Under Title III of the JOBS Act, a funding portal is a new type of intermediary the business activities of which are of limited scope, as defined by the JOBS Act, relative to entities that register as brokers. Among other things, the JOBS Act adds Section 4(a)(6) to the Securities Act,[23] which creates an exemption (the ''crowdfunding exemption'') from registration requirements under the Securities Act for securities offered and sold pursuant to the crowdfunding exemption. Broadly, the crowdfunding exemption permits an issuer to offer and sell up to $1 million in securities over a 12-month period. The amount of any such security sold to an investor by an issuer is not permitted to exceed specified thresholds. Further, the issuer must comply with other specified requirements under the JOBS Act and Commission rules. Any offering pursuant to the crowdfunding exemption must be conducted through a broker or a funding portal that is registered with the SEC.

Under the JOBS Act, a funding portal must become a member of a national securities association that is registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*–3). FINRA is the only national securities association that is registered under Section 15A of the Exchange Act.

Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if it is adopted by the SEC and to apply for FINRA membership.

The proposed rule change would adopt the fees applicable to funding portal members. FINRA has separately filed a proposed rule change to establish a set of Funding Portal Rules and related forms for funding portals.[24]

2. Regulatory Objective

The crowdfunding exemption is designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The exemption creates a regulatory pathway for funding portals to facilitate the offer and sale of securities, as registered funding portals, without being required to register with the SEC as brokers, provided they comply with specified limitations on their business activity.

The proposed rule change aims to establish a fee regime for membership that adequately reflects the regulatory costs of review, aligns regulatory costs with those imposed on other FINRA members and minimizes the burden imposed on funding portal members by setting forth regulatory fees that reflect the limited scope of activities of funding portals while also maintaining investor protection.

3. Economic Baseline

Funding Portal Rule 100(a), as proposed in SR–FINRA–2015–040, provides in part that all funding portal members shall be subject to the FINRA By-Laws and FINRA Regulation By-Laws, unless the context requires otherwise, and the Funding Portal Rules. Member regulatory fees are set forth in Schedule A to the By-Laws of the Corporation. FINRA proposes to amend Schedule A by adding Section 15, Funding Portal Member Fees.

In the absence of the proposed rule change, funding portals would need to register as brokers and would thereby be subject to the fees charged to broker-dealer members. However, many of the fees charged to broker-dealer members pursuant to Schedule A to the By-Laws, such as Trading Activity Fees, Regulatory Transaction Fees and Branch Office Fees, have no application to funding portal members due to the limited scope of funding portal activities. For the fees that are applicable to funding portals, the fees currently charged to broker-dealer members are generally higher than the fees set forth in the proposed rule change.

Therefore, if funding portals were subject to the fees charged to broker-dealer members, there might be several unintended consequences. First, there may be confusion among funding portal members as some of the fees are not applicable to funding portals, which may increase compliance costs. Second, higher fees may potentially restrict the number of registered funding portals and thus reduce competition in the crowdfunding intermediary market. Third, higher fees may also limit the activities of those funding portals that do choose to become funding portal members, for instance because higher costs to membership may restrict capital available for business purposes.

In addition to prospective funding portals, the absence of the proposed rules may also have an impact on: Issuers, typically startups and small businesses seeking to raise capital by issuing securities; investors that purchase or may consider purchasing securities in such offerings; and other capital providers, broker-dealers and finders that currently participate in private offerings.

For the issuers seeking to raise capital through securities-based crowdfunding in reliance on the crowdfunding exemption, limited numbers of registered funding portals due to higher fees may result in higher capital raising costs, decreased opportunities for selling securities through a given registered funding portal, or an aggregate reduction in the capacity of registered funding portals. Higher fees to registered funding portals may also be passed on to issuers. All of these impacts would collectively make it more difficult for startups and small businesses to efficiently find capital for their operations.

Limited numbers of registered funding portals may also limit investor access to securities-based crowdfunding offerings. In addition, higher capital raising costs to issuers and higher fees

[21] As FINRA gains experience in regulating funding portal member activities, FINRA will periodically review funding portal fee revenues in conjunction with these costs to determine applicable fees and rates.

[22] 15 U.S.C. 78c(h)(2).

[23] 15 U.S.C. 77d(a)(6).

[24] *See* note 12 *supra.*

to registered funding portals could be passed on to potential investors.

The absence of the proposed rule change also might have an effect on broker-dealers and finders participating in private offerings. If issuers intending to raise capital in reliance on the crowdfunding exemption face higher costs due to the fees charged to funding portals, some may instead choose to raise capital through private offerings with the assistance of broker-dealers and finders. This could increase the revenue of finders and broker-dealers in the market for private offerings, but less competition in the fundraising market may lead to less efficient allocation of capital.

4. Economic Impacts

a. Benefits

The proposed rule change sets forth regulatory fees for prospective funding portal members. It facilitates the purposes of the proposed Funding Portal Rules by: Providing a mechanism by which funding portals can become funding portal members of FINRA and thereby comply with the JOBS Act; providing certainty with respect to the membership process; establishing a fee structure that is broadly consistent with FINRA's fees to its current members for similar activities; and, aligning the costs of membership with the expenditure of regulatory resources that would be necessary for review of funding portal membership applications.

b. Costs to Funding Portals

The proposed rule change sets forth the fees that would apply to funding portals. The costs associated with the provisions of the proposed rule change are discussed below. The proposed fees are generally lower than the fees that are charged to broker-dealer members under current rules. As such, the fees that would be charged to funding portal members would be generally higher in the absence of the proposed rule change.

c. Initial Membership Application

The SEC estimates that approximately 50 entities per year would choose to register as funding portals during the first three years following effectiveness of the SEC's proposed rules.[25] The SEC also estimates that two out of the 50 funding portals would be nonresident funding portals.[26] FINRA is proposing an initial membership application fee of $2,700 per funding portal. Therefore, FINRA estimates the total membership application fee across all funding portals to be $135,000 per year ($2,700/funding portal × 50 funding portals). The SEC estimates that the two nonresident intermediaries would face an additional cost of $25,130 to complete Schedule C, retain an agent for the service and provide an opinion of counsel to register as a nonresident funding portal.[27]

The SEC assumes that 90% of the funding portals would employ an outside party to assist in the membership process and that a third party would charge $25,000 on average.[28] Thus the total costs charged by the outside parties to funding portals are estimated to be approximately $1,125,000 ($25,000/third party × 45 funding portals) per year.

While the proposed rule change does not require funding portal members to appoint a dedicated Chief Compliance Officer, FINRA expects that funding portals generally will have designated employees responsible for compliance activities. As such, FINRA estimates certain compliance costs based on the assumption of the appointment of a Chief Compliance Officer or person in a similar position. To the extent that the funding portal member designates an employee who is not a Chief Compliance Officer to fulfill this responsibility, the estimate below is conservative. The SEC assumes that a funding portal's Chief Compliance Officer or person in a similar position would spend 110 hours assisting in the membership process or 55 hours if an outside party is hired.[29] The hourly rate for a Chief Compliance Office is estimated to be $441.[30] Therefore, the total annual costs associated with Chief Compliance Officers are estimated to be $1,334,025 ($441/hour × 110 hours × 5 funding portals + $441/hour × 55 hours × 45 funding portals).

In sum, the total costs to complete initial funding portal membership processes with FINRA are estimated to be $2,644,285 ($135,000 + $25,130 × 2 + $1,125,000 + $1,334,025) per year across all funding portals for the first three years following effectiveness of the SEC's proposed rules.

FINRA also proposes to conduct one or more membership interviews with a representative or representatives of a funding portal applicant prior to FINRA's decision on the application. FINRA does not expect the costs associated with membership interviews to be material. In case of an application denial, the applicant may appeal FINRA's decision and may apply for review by the SEC if aggrieved by the final action of FINRA. The direct costs associated with an appeal of FINRA's decision or an application to SEC for review may include expenses to file the application and legal fees. Indirect costs may include the time involved to pursue the appeal and the lost revenues while the appeal is pending. These costs may vary significantly and are difficult to quantify.

d. Approval of Change in Ownership or Control

The proposed rule change would impose a continuing membership application fee of $500 charged at the time Form FP–CMA is filed pursuant to proposed Funding Portal Rule 110(a)(4). Based on FINRA staff experience with member applications, approximately 3.8% of the member firms file a change in ownership or control each year. Assuming the same rate for funding portals, the SEC's assumption of 50 funding portals per year indicates that approximately 11 (50 × 3.8% + 100 × 3.8% + 150 × 3.8%) Form FP–CMAs would be filed in the first three years. This represents $5,500 in fees to be paid.

e. Refunds for Incomplete or Withdrawn Applications

Under the proposed rule change, if a Form FP–NMA or Form FP–CMA application is rejected as incomplete within 14 days in accordance with proposed Funding Portal Rule 110(a)(5) or withdrawn by the applicant within 14 days in accordance with proposed Funding Portal Rule 110(a)(7), the application fee would be refunded less $250. To estimate the number of applications that would qualify for a refund, FINRA looks to its experience with broker-dealer membership applications. Since March 2013, when the refund processing fee for full broker-dealer applications withdrawn in the first 30 days was put into place, 1,067 full Form CMAs have been filed through July 31, 2015, including 48 CMAs that were incomplete or withdrawn and were charged the refund processing fees, representing a 4.5% rate of refund processing fee charges. Assuming 150 total Form FP–NMAs and 11 total Form FP–CMAs in the first three years, using the same rate of 4.5% leads to the estimate that approximately seven Form FP–NMAs and one Form FP–CMA would be subject to the $250 processing fee in lieu of the overall Forms FP–NMA

[25] *See* Regulation Crowdfunding Proposal at 78 FR 66539.

[26] *See* Regulation Crowdfunding Proposal at 78 FR 66540.

[27] *See* Regulation Crowdfunding Proposal at 78 FR 66542.

[28] *See* Regulation Crowdfunding Proposal at 78 FR 66542.

[29] *See* Regulation Crowdfunding Proposal at 78 FR 66542.

[30] *See* Regulation Crowdfunding Proposal at 78 FR 66543.

and FP–CMA fees (of $2,700 or $500 each, respectively).

f. Gross Income Assessment

Under the proposed rule change, a funding portal with annual gross revenue of $1 million or less would pay a $1,200 annual fee. Assuming that all funding portals will have an annual gross income of $1 million or less, the total costs to remain a member of FINRA are estimated to be $60,000 ($1,200/portal × 50 funding portals) in the first year following effectiveness of the SEC rules, $120,000 ($1,200/portal × 100 funding portals) in the second year, and $180,000 ($1,200/portal × 150 funding portals) per year going forward.

g. Nonresident Funding Portals

Nonresident funding portals would be required to reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the District Office of appropriate jurisdiction. The SEC estimates that two out of the 50 funding portals per year would be nonresident. FINRA does not expect the reimbursement to be material. The SEC also estimates that the two nonresident funding portals would be subject to an additional annual cost of $130 to maintain an agent for service of process in the United States.[31]

h. Late Filings

Proposed Section 15 would assess a funding portal member a fee of $100 on the first day and $25 for each subsequent day, up to a maximum of $1,575, if statutory disqualification information is not provided or updated pursuant to proposed Funding Portal Rule 800(b)(2) within the prescribed 10 days. Given the limited scope of the proposed disclosure requirements for funding portal members, FINRA does not expect to receive a significant number of late filings.

i. Relief From Statutory Disqualification or Other Ineligibility Provisions

Section 15 would impose a fee of $1,500 upon filing of an application by a funding portal to continue to employ a person that is subject to a statutory disqualification or is otherwise ineligible under FINRA rules from association with the funding portal. The rule provides that any funding portal whose application results in a full hearing for eligibility also would have to pay FINRA an additional fee of $2,500. In addition, Section 15 would provide that any funding portal that continues to employ as an associated person any individual subject to disqualification shall pay FINRA an annual fee of $1,500 when the individual is classified as a Tier 1 statutorily disqualified individual, and a fee of $1,000 when the individual is classified as a Tier 2 statutorily disqualified individual.

Based upon historical data ascertained over the past five years, FINRA performed statutory qualification reviews on an average of 0.4209% of the total membership per year, and 0.0342% were deemed statutorily disqualified. Out of the statutory disqualifications, 22.5% (or 0.0077% of the total membership) elected to file an application to initiate the eligibility proceedings. Given the limited number of expected funding portals and the likely small size of the funding portals as compared to broker-dealers, FINRA expects the volume of eligibility proceeding applications to be immaterial.

In case a funding portal member elects to file an application, it needs to complete FINRA's Form MC–400 for an individual or Form MC–400A for the funding portal member. A Form MC–400 or MC–400A is estimated to take a Chief Compliance Officer or person in a similar position 20 hours to complete. Assuming an hourly rate of $441 for a Chief Compliance Officer, the estimated cost for a funding portal to file an application would be $8,820.

Based upon its experience with member firms, FINRA expects that a small percentage of applications will be appealed to the SEC for review. The direct cost in connection with an appeal to the SEC of a statutory disqualification denial will be legal fees to pursue the appeal if the party is represented, which can vary significantly. The indirect costs may include the time involved to pursue an appeal and the lost revenue or income while an appeal is pending if the member is not already a member of FINRA, which are difficult to quantify.

j. Fingerprint Fees

Section 15 would provide that each funding portal member shall pay $15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the funding portal member, or $30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints. Effective February 1, 2015, the United States Department of Justice charges $12.75 for each set of fingerprints.[32] Assuming that on average five persons will be required to be fingerprinted per funding portal, FINRA estimates that 250 persons will be fingerprinted per year. If half of the fingerprints will be submitted electronically, the total payments for fingerprints are estimated to be $8,812.5 (($15 + $12.75) × 125 + ($30 + $12.75) × 125) per year.

k. Data and Publications

Section 15 would provide that if there is no provision in the By-Laws for specific fees, FINRA may collect compensatory charges for data from its records or for its publications. FINRA believes that the total charges would be immaterial.

l. Impact on Competition

As discussed earlier, under the JOBS Act, an intermediary that engages in crowdfunding on behalf of issuers must register with the SEC as a funding portal or broker and register with an applicable self-regulatory organization.[33] The proposed rule change would establish a fee schedule imposed equally on all prospective funding portal registrants. As such, it creates no competitive benefit or cost to any set of registrants seeking to become a funding portal member. Broker-dealer members that seek to engage in crowdfunding business may do so, but may be subject to the fees associated with an application for approval of change in business operations pursuant to NASD Rule 1017. FINRA believes that it has mitigated impacts on competition among broker-dealers by relying on the membership application process and fee schedule that is already in place for such members. This approach would treat the potential extension of a broker-dealer's business to crowdfunding services just as it would any potential change in the business activity of a broker-dealer and therefore creates no new obligations or impacts.

To the extent that the proposed fees for funding portals create incentives to conduct crowdfunding services through a funding portal rather than through an existing broker-dealer, FINRA notes that any broker-dealer can opt to offer such services through a funding portal affiliate. In doing so, the broker-dealer would face the same fees as any other funding portal registrant.

As discussed earlier, in the absence of the proposed rule change, funding

[31] *See* Regulation Crowdfunding Proposal at 78 FR 66543.

[32] *See* Department of Justice, Federal Bureau of Investigation (''FBI''): FBI Criminal Justice Information Services Division Fee Schedule, 79 FR 63943 (October 27, 2014).

[33] *See* note 9 *supra.*

portals would need to register as brokers and the fees charged to funding portals would be the higher fees currently charged to broker-dealer members. FINRA's intent to establish a fee structure that minimizes the burden imposed on funding portal members by attempting to set the fees at the minimum necessary to recover FINRA's expected costs may encourage more entrants into crowdfunding activity. As such, the proposed rule change may promote competition in the market for crowdfunding services among funding portals and broker-dealers, increase the provision of capital to startups and small businesses, and lower the costs of capital-raising to these firms. In this way, the proposed rule change may enhance competition for the goods and services provided by those seeking funding from investors through funding portals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and paragraph (f)(2) of Rule 19b–4 thereunder.[35] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2015–041 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27371 Filed 10–27–15; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76239; File No. SR–FINRA–2015–040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 9, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the ''Funding Portal Rules'') and related forms. In addition, as part of the proposed rule change, FINRA proposes to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Title III of the Jumpstart Our Business Startups (''JOBS'') Act,[3] enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through ''crowdfunding.''[4] Under Section 302 of the JOBS Act, a crowdfunding intermediary that engages in crowdfunding on behalf of issuers relying on the JOBS Act's ''crowdfunding exemption''[5] is required to register with the SEC as a ''funding portal''[6] or broker and to register with an applicable self-regulatory organization.[7]

In October 2013, the SEC proposed Regulation Crowdfunding to require registration of funding portals and to implement the provisions of Title III of the JOBS Act.[8] Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if adopted by the SEC and to apply for FINRA membership. Section 3(h)(2) of the Act,[9] as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals. Further, FINRA has stated that its rulemaking would be informed by the SEC's rulemaking.[10] Accordingly, FINRA is proposing the Funding Portal Rules and related forms that would apply to SEC-registered funding portals that become FINRA members pursuant to the JOBS Act and the SEC's Regulation Crowdfunding. The proposed Funding Portal Rules reflect Regulation Crowdfunding as proposed by the SEC and would implement, under FINRA rules, the provisions of Title III of the JOBS Act. FINRA has streamlined the proposed rules to reflect the limited scope of activity permitted by funding portals[11] while also maintaining investor protection. FINRA has written the proposed rules specifically for funding portals.[12]

In developing the proposed Funding Portal Rules, FINRA has considered comments that were received in response to *Regulatory Notice* 13–34 (October 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms) (the ''*Notice*'').[13] The proposed Funding Portal Rules and forms as set forth in this filing are largely as published in the *Notice.* FINRA has made clarifying revisions and a number of additions to the proposal for administrative purposes. Further, as discussed below, FINRA has revised the proposal vis-à-vis the version published in the *Notice* to better align the provisions governing the right to appeal and hearing under the proposed membership application and eligibility rules with existing provisions for broker-dealer members. In addition, FINRA is not proposing at this time the proposed rule that would have required funding portal members to maintain fidelity bond coverage.[14] Further, FINRA is not proposing at this time the rule that would have required funding portal members to develop and implement a written anti-money laundering program.[15]

As set forth in this filing, the proposed Funding Portal Rules consist of a set of seven rules (Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200) and related forms (Form FP–NMA, Form FP–CMA, Funding Portal Rule 300(c) Form, and Form FP-Statement of Revenue). In addition, as part of the proposed rule change, FINRA is proposing to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook. New FINRA Rule 4518 would apply to registered broker members. The proposed requirements of the Funding Portal Rules and related forms and FINRA Rule 4518 are set forth below.

A. Proposed Funding Portal Rule 100 (General Standards)

Proposed Funding Portal Rule 100 (General Standards), similar to the FINRA Rule 0100 Series, sets forth basic standards and definitions for purposes of the Funding Portal Rules. Paragraph (a) under the rule provides that all funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws and FINRA Regulation By-Laws,[16] unless the context requires otherwise, and the Funding Portal Rules. The rule provides that persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. For purposes of Section 1(a) of Article III of the FINRA By-Laws, the proposed rule provides that a registered broker or dealer shall include a registered funding portal.

The proposed rule provides that the terms used in the Funding Portal Rules, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is

[3] Pub. L. 112–106, 126 Stat. 306 (2012).

[4] Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.

[5] *See* new Section 4(a)(6) of the Securities Act of 1933 (the ''Securities Act'') (15 U.S.C. 77d(a)(6)), as amended by the JOBS Act. The crowdfunding exemption creates an exemption from registration under the Securities Act for securities offered by issuers pursuant to Title III of the JOBS Act.

[6] Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)), as amended by Title III of the JOBS Act, provides that the term ''funding portal'' means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)), that does not: (1) offer investment advice or recommendations; (2) solicit purchases, sales, or offers to buy the securities offered or displayed on its Web site or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its Web site or portal; (4) hold, manage, possess, or otherwise handle investor funds or securities; or (5) engage in such other activities as the Commission, by rule, determines appropriate. (The JOBS Act inadvertently created two Sections 3(a)(80) in the Act, the other being the definition of ''emerging growth company,'' added by Section 101(b) of Title I of the JOBS Act. All references in this filing to Section 3(a)(80) of the Act are to the definition of ''funding portal'' under Title III of the JOBS Act.)

[7] *See* Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d-1(a)(1) and (2)).

[8] *See* Securities Exchange Act Release No. 70741 (October 23, 2013), 78 FR 66428 (November 5, 2013) (Crowdfunding; Proposed Rules) (the ''Regulation Crowdfunding Proposal''). The SEC's proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A. FINRA is the only registered national securities association.

[9] 15 U.S.C. 78c(h)(2).

[10] *See* Securities Exchange Act Release No. 68633 (January 11, 2013), 78 FR 4186 (January 18, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act; File No. SR–FINRA–2013–005).

[11] *See* note 6 *supra.* Proposed Rule 300(c)(2) under Regulation Crowdfunding reflects the definition of funding portal as set forth in Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)).

[12] FINRA also has submitted a companion filing to adopt Section 15 of Schedule A to the FINRA By-Laws governing the fees for funding portals that are FINRA members. *See* SR–FINRA–2015–041.

[13] Comments are discussed in Item II.C of this filing.

[14] FINRA is monitoring the development of funding portal business and will determine at a later time whether a rulemaking with respect to fidelity bonds or other financial responsibility requirements is merited. *See also* Item II.C.1 of this filing.

[15] Pursuant to the Bank Secrecy Act (''BSA'') (31 U.S.C. 5311, *et seq.*) and implementing regulations thereunder (31 CFR Chapter X), brokers and dealers in securities that are registered or required to be registered with the Commission must among other things establish and maintain an effective anti-money laundering program. The BSA and implementing regulations thereunder do not apply to funding portals at this time. *See also* Item II.C.2 of this filing.

[16] FINRA has revised the proposed rule vis-à-vis the version published in the *Notice* to add ''and FINRA Regulation By-Laws'' to clarify that funding portal members will also be subject to the FINRA Regulation By-Laws.

defined differently in a Funding Portal Rule, or unless the context of the term within a Funding Portal Rule requires a different meaning.

The proposed definitions contained in the rule are set forth under paragraph (b). The proposed definitions are largely based on definitions under current FINRA rules, modified as appropriate to apply to funding portal members. The proposed rule provides that, when used in the Funding Portal Rules, unless the context otherwise requires, the terms below have the following meanings:

- *Associated person of a funding portal member or person associated with a funding portal member:* The term ''associated person of a funding portal member'' or ''person associated with a funding portal member'' means any sole proprietor, partner, officer, director or manager of a funding portal, or other natural person occupying a similar status or performing similar functions, or any natural person directly or indirectly controlling or controlled by a funding portal member, or any employee of a funding portal member.
- *By-Laws:* The term ''By-Laws'' means the By-Laws of the Corporation or the FINRA By-Laws.
- *Exchange Act or SEA:* The term ''Exchange Act'' or ''SEA'' means the Securities Exchange Act of 1934, as amended.
- *FINRA:* The term ''FINRA'' means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.
- *Funding Portal:* The term ''funding portal'' is as defined pursuant to proposed Rule 300(c)(2) of SEC Regulation Crowdfunding.
- *Funding Portal Member:* The term ''funding portal member'' means any funding portal admitted to membership in FINRA.
- *Funding Portal Rules:* The term ''Funding Portal Rules'' means Funding Portal Rules 100 through 1200.
- *Investor:* The term ''investor'' does not include a broker, dealer or funding portal.
- *Person:* The term ''person'' includes any natural person, partnership, corporation, association, or other legal entity (provided, however, that for purposes of the definition of associated person of a funding portal member as set forth under the rule, the term ''person'' shall solely include a natural person).
- *SEC:* The term ''SEC'' means the Securities and Exchange Commission.
- *Securities Act:* The term ''Securities Act'' means the Securities Act of 1933, as amended.

B. Proposed Funding Portal Rule 110 (Funding Portal Application)

1. Proposed Funding Portal Rule 110(a) (Member Application Process)

Proposed Funding Portal Rule 110(a) addresses the membership application process (''MAP'') for funding portals (referred to in the rule as ''FP Applicants''). The MAP will enable FINRA to assess whether funding portals are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules. The proposed rule is based on the current NASD Rule 1010 Series membership rules that apply to broker-dealers. However, as discussed below, FINRA has simplified the MAP for funding portals to reflect the limited nature of their business. The proposed rule requirements are set forth below.

- *Definitions (Proposed Funding Portal Rule 110(a)(1))*

Paragraph (a)(1) of the proposed rule sets forth a set of definitions that apply solely for purposes of MAP. Specifically:

○ *Associated Person:* The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, the term ''associated person'' means any: (1) Sole proprietor, partner, officer, director or manager of a funding portal, or other natural person occupying a similar status or performing similar functions; (2) natural person directly or indirectly controlling or controlled by such funding portal, or any employee of a funding portal, except that any person associated with a funding portal whose functions are solely clerical or ministerial shall not be included in the meaning of such term; or (3) partnership, corporation, association, or other legal entity controlled by or controlling the FP Applicant.

○ *FP Applicant:* The term ''FP Applicant'' means a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of Funding Portal Rule 110 or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of the rule.[17]

○ *Day:* The term ''day'' means calendar day. The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, in calculating a period of time, the day of the act (*e.g.,* filing of application, service of notice) from which the period of time designated begins to run shall not be included, provided, however, that where the last day of a period so calculated is a Saturday, Sunday or day on which FINRA is otherwise closed, the period shall run until the end of the next business day.[18]

○ *Department:* The term ''Department'' means the Department of Member Regulation of FINRA.

○ *District:* The term ''district'' means a district established by the FINRA Regulation Board.

- *Service or Filing Date (Proposed Funding Portal Rule 110(a)(2))*

Proposed Funding Portal Rule 110(a)(2)(A) provides that FINRA shall serve a notice or decision issued under paragraph (a) of the rule by electronic delivery. Paragraph (a)(2)(B) of the rule provides that, for purposes of Funding Portal Rule 110(a), service by FINRA or filing by an FP Applicant shall be deemed complete on the date recorded by FINRA's electronic systems for electronic communications or by other means of verification prescribed by FINRA.

- *Application To Be a Funding Portal Member (Proposed Funding Portal Rule 110(a)(3))*

Proposed Funding Portal Rule 110(a)(3)(A) provides that an FP Applicant for FINRA membership must submit its application to the Department by filing a Form FP–NMA [19] in the manner prescribed by FINRA and an application fee. Proposed Funding Portal Rule 110(a)(3)(B) provides that, at the time an FP Applicant for FINRA membership submits its application pursuant to paragraph (a)(3)(A) of the rule, the FP Applicant must submit information, in a format to be prescribed by FINRA, indicating whether the FP Applicant or any associated person (as defined in Funding Portal Rule 100(b)(1)) of the FP Applicant is subject to an event described in Section 3(a)(39) of the Act.[20] The FP Applicant must keep this information current and must update such information promptly, but

[17] Proposed Funding Portal Rule 110(a)(3) and Rule 110(a)(4) are discussed below.

[18] As proposed in the *Notice,* the proposed definition of ''day'' for purposes of the MAP for funding portals did not address situations where the last day of a period calculated is a Saturday, Sunday or day on which FINRA is closed. FINRA has added this language in the interest of clarity.

[19] Proposed Form FP–NMA is set forth in Exhibit 3a. FINRA has modified the proposed form vis-à-vis the version published in the *Notice* to reflect the removal of the proposed anti-money laundering and fidelity bond requirements as had been set forth in the *Notice* and to make other clarifications. Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than the Form NMA for broker-dealer applicants.

[20] 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of ''statutory disqualification.''

in any event not later than 10 days following any change in such information.

- *Application for Approval of a Change in Ownership or Control (Proposed Funding Portal Rule 110(a)(4))*

Proposed Funding Portal Rule 110(a)(4)(A) provides that a funding portal member must file an application for prior approval of any change:

○ in the equity ownership or partnership capital, LLC membership interest, or other ownership interest of the funding portal member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or

○ of control persons of the funding portal member, other than the appointment or election of a natural person as an officer or director of the funding portal member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the funding portal member.

Paragraph (a)(4)(B) of the rule provides that a funding portal member must submit its application for prior approval of any of the changes described in Funding Portal Rule 110(a)(4)(A) to the Department by filing a Form FP–CMA [21] in the manner prescribed by FINRA and an application fee.

- *Rejection of Application That Is Not Complete (Proposed Funding Portal Rule 110(a)(5))*

Proposed Funding Portal Rule 110(a)(6) provides that, within 14 days after the filing of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application, and the FP Applicant must file any additional information and documents with the Department within 14 days after service of the Department's initial request. The rule provides that the Department may serve subsequent requests for additional information or documents at any time during the membership application process. Unless otherwise agreed by the Department and the FP Applicant, the FP Applicant must file any additional information and documents with the Department within seven days after service of any subsequent request.

- *Withdrawal of Application (Proposed Funding Portal Rule 110(a)(7))*

Proposed Funding Portal Rule 110(a)(7) provides that, if an FP Applicant withdraws an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 14 days after filing the application, FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. The rule provides that if the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant must submit a new application and fee pursuant to paragraphs (a)(3) or (a)(4) of the rule.

- *Lapse of Application (Proposed Funding Portal Rule 110(a)(8))*

Proposed Funding Portal Rule 110(a)(8) is an addition to the proposal vis-à-vis the proposed rules as published in the *Notice.* The provision, based largely on NASD Rule 1012(b), is designed to ensure that the provisions governing lapse of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule better align with existing provisions for broker-dealer members, while also reflecting the more streamlined application process provided for funding portal members in light of their limited permissible activities and the related shorter time frames in which the Department must act on an application. Proposed Funding Portal Rule 110(a)(8)(A) provides that, absent a showing of good cause, an application filed under paragraphs (a)(3) or (a)(4) of the rule shall lapse if an FP Applicant fails to:

○ Respond fully within 14 days after service of an initial written request, or within seven days after service of a subsequent written request, for information or documents under paragraph (a)(6) of the rule, or within such other time period as agreed to by the Department and the FP Applicant;

○ appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (a)(9) of the rule, as discussed below; or

○ file an executed membership agreement under paragraph (a)(11) of the rule, as discussed below, within seven days after service of the agreement, or within such other period as agreed to by the Department and the FP Applicant.

Proposed Funding Portal Rule 110(a)(8)(B) provides that if an FP Applicant wishes to again seek membership or approval of a change in ownership or control subsequent to the lapse of an application pursuant to paragraph (a)(8)(A) of this Rule, then the FP Applicant shall be required to submit a new application in the manner prescribed in paragraph (a)(3) or (a)(4) of the rule, respectively, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. The rule provides that FINRA shall not refund any fee for a lapsed application.

- *Membership Interview (Proposed Funding Portal Rule 110(a)(9))*

Proposed Funding Portal Rule 110(a)(9)(A) provides that, before the Department serves its decision on an application for new membership in FINRA, the Department shall conduct one or more membership interviews with a representative or representatives of the FP Applicant. The membership interview(s) may be conducted by video conference or such other means as FINRA may specify. Paragraph 110(a)(9)(B) of the rule provides that, at least five days before a membership interview, the Department shall serve on the FP Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the FP Applicant who are required to participate in the interview. The rule provides that the Department shall serve the notice in a manner consistent with proposed Funding Portal Rule 110(a)(2). The rule further provides that the FP Applicant and the Department may agree to a shorter or longer period for notice or a different method of service. Paragraph 110(a)(9)(C) of the rule provides that, unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 30 days after the filing of an application or within 14 days after the filing of all additional information or documents requested, whichever is later.

- *Standards for Granting or Denying Application (Proposed Funding Portal Rule 110(a)(10))*

Proposed Funding Portal Rule 110(a)(10) provides that, after considering an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, other information and documents provided by the FP Applicant during the application process, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the FP

[21] Proposed Form FP–CMA is set forth in Exhibit 3b. FINRA has made clarifying revisions to the form vis-à-vis the version published in the *Notice.* Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than is required for broker-dealer applicants.

Applicant meets each of the following five standards, as applicable: [22]

○ The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons: [23]

➢ is subject to an event described in Section 3(a)(39) of the Exchange Act; and

➢ is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea of an FP Applicant or its associated persons.

○ The FP Applicant has established all contractual or other arrangements and business relationships with banks, broker-dealers, clearing corporations, service bureaus, escrow agents, transfer agents, technology service providers, or others necessary to initiate the operations described in the FP Applicant's Form FP–NMA.[24]

○ The FP Applicant has a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules.[25]

○ The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.[26]

○ The FP Applicant has a recordkeeping system that enables the FP Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.[27]

• *Granting or Denying Application (Proposed Funding Portal Rule 110(a)(11))*

Proposed Funding Portal Rule 110(a)(11)(A) provides that, if the Department determines that the FP Applicant meets each of the applicable standards in paragraph (a)(10) of the rule, the Department shall grant the application filed pursuant to proposed Funding Portal Rule 110(a)(3) or (a)(4). The rule provides that the FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement. Paragraph (a)(11)(B) of the rule provides that, if the Department determines that the FP Applicant does not meet one or more of the applicable standards in proposed Funding Portal Rule 110(a)(10), the Department shall deny the application.

• *Decision (Proposed Funding Portal Rule 110(a)(12))*

Proposed Funding Portal Rule 110(a)(12) provides that the Department shall serve a written decision on the application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 60 days after the filing of the application or such later date as the Department and the FP Applicant have agreed in writing.[28] The rule provides that if the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a)(10) of the rule. The rule provides that a decision that denies the application shall become effective upon service. The Department shall serve its decision and, as applicable, the membership agreement on the FP Applicant in accordance with paragraph (a)(2) of the rule.

• *Appeal of Department's Decision (Proposed Funding Portal Rule 110(a)(13))*

Proposed Funding Portal Rule 110(a)(13) addresses an appeal of the Department's decision. FINRA has revised the proposed rule vis-à-vis the proposal as published in the *Notice* so that the appeal process, based in large part on NASD Rules 1015 and 1016, better aligns with existing provisions for broker-dealer applicants. As revised, the proposed rule among other things: (1) Permits the FP Applicant to file a written request for review of the Department's decision with the full National Adjudicatory Council; (2) provides for the National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 to appoint a Subcommittee to participate in the review; (3) allows either the FP Applicant to request or the Subcommittee to direct a hearing: and (4) sets forth hearing procedures. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

○ Request for Review; Final Action

Paragraph (a)(13)(A)(i) of the rule provides that, within 14 days after service of a decision under paragraph (a)(12) of the rule, an FP Applicant may file a written request for review with the National Adjudicatory Council. A request for review must state with specificity why the FP Applicant believes that the Department's decision is inconsistent with the applicable standards set forth in paragraph (a)(10) of the rule or otherwise should be set aside, and state whether a hearing is requested. An FP Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Adjudicatory Council. Paragraph (a)(13)(A)(ii) of the rule provides that, if the FP Applicant does not file a request for a review, abandons its appeal or withdraws its notice of appeal, the Department's decision shall constitute final action by FINRA.

○ Transmission of Documents

Paragraph (a)(13)(B) of the rule provides that, within 14 days after the filing of a request for review, the Department shall: Transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and serve on the FP Applicant a copy of such documents (other than those documents originally submitted by the FP Applicant) and a copy of the index.

○ Appointment of Subcommittee

Paragraph (a)(13)(C) of the rule provides that the National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 shall appoint a Subcommittee to participate

[22] The five standards that FINRA is proposing are streamlined and consolidated vis-à-vis the 14 standards that apply to broker-dealer applications under NASD Rule 1014(a). FINRA believes that the streamlined, consolidated approach is appropriate to reflect the limited nature of funding portal business.

[23] *See* proposed Funding Portal Rule 110(a)(10)(A) in Exhibit 5.

[24] *See* proposed Funding Portal Rule 110(a)(10)(B) in Exhibit 5.

[25] *See* proposed Funding Portal Rule 110(a)(10)(C) in Exhibit 5.

[26] *See* proposed Funding Portal Rule 110(a)(10)(D) in Exhibit 5.

[27] *See* proposed Funding Portal Rule 110(a)(10)(E) in Exhibit 5.

[28] The proposed 60 day time frame is shorter than the 180 day time frame that applies to broker-dealer applicants under NASD Rule 1014(c). FINRA believes that the 60 day time frame for funding portals is appropriate to reflect the limited nature of funding portal business. The provision ''or such later date as the Department and the FP Applicant have agreed in writing'' is an addition to the proposal vis-à-vis the proposed rules as published in the *Notice* and is intended, based in large part on NASD Rule 1014(c), to better align the rule with existing provisions for broker-dealer members. In addition, FINRA has made other conforming revisions.

in the review.[29] Paragraph (a)(13)(C) further provides that the Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

○ Powers of Subcommittee

Paragraph (a)(13)(D) of the proposed rule provides that, if a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. The rule provides that if a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the FP Applicant or the Department in connection with the request for review.

○ Hearing

Paragraph (a)(13)(E) of the rule addresses the hearing:

➢ Notice: Paragraph (a)(13)(E)(i) provides that, if a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the National Adjudicatory Council or service of the notice by the Subcommittee. The rule provides that the National Adjudicatory Council shall serve written notice of the date and time of the hearing to the FP Applicant by email, facsimile or overnight courier not later than 14 days before the hearing;

➢ Counsel: Paragraph (a)(13)(E)(ii) provides that the FP Applicant and the Department may be represented by counsel at a hearing conducted pursuant to the rule;

➢ Evidence: Paragraph (a)(13)(E)(iii) provides that formal rules of evidence shall not apply to a hearing under the rule. Not later than five days before the hearing, the FP Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. The rule provides that if the FP Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph;

➢ Transcript: Paragraph (a)(13)(E)(iv) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter. The rule provides that a transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The FP Applicant, the Department, or a witness may seek to correct the transcript. The rule further provides that, upon notice to the FP Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

○ Additional Information, Briefs

Paragraph (a)(13)(F) of the rule provides that, at any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the FP Applicant or the Department to file additional information or briefs. The rule provides that any additional information or brief filed shall be provided to all parties before the National Adjudicatory Council renders its decision.

○ Subcommittee Recommendation

Paragraph (a)(13)(G) of the rule provides that the Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to paragraph (a)(13)(E) of the rule.

○ Decision

Paragraph (a)(13)(H) of the rule provides that, after considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions.

○ Discretionary Review by the FINRA Board

Paragraph (a)(13)(I)(i) of the rule provides that the National Adjudicatory Council shall provide a copy of its decision to the Board. Alternatively, the National Adjudicatory Council may remand the membership proceeding with instructions. If the Board does not call the decision for review under paragraph (a)(13)(I)(ii) of the rule, as discussed below, the National Adjudicatory Council shall issue the written decision after the expiration of the Board call for review period, and the decision shall constitute final FINRA action.

Paragraph (a)(13)(I)(ii) of the rule provides that a Governor may call a membership proceeding for review by the Board at the next meeting of the Board that is at least 15 days after the date on which the Board received the decision. If a call for review is made, the Board shall review the membership proceeding not later than the next meeting of the Board. The rule provides that the Board shall issue a written decision affirming, modifying or reversing the National Adjudicatory Council's decision and setting forth its findings and conclusions. Alternatively, the Board may remand the membership proceeding with instructions. The rule provides that the decision shall constitute final FINRA action, unless the Board remands the membership proceeding.

- *Application to the SEC for Review (Proposed Funding Portal Rule 110(a)(14))*

Proposed Funding Portal Rule 110(a)(14) provides that a person aggrieved by final action of FINRA under paragraph (a) of the rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Act.[30] The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the SEC otherwise orders.

- *Filing of Misleading Information as to Membership or Registration (Proposed Funding Portal Rule 110(a)(15))*

Proposed Funding Portal Rule 110(a)(15) provides that no funding portal member or person associated with a funding portal member shall file with FINRA information with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or that could in any way tend to mislead, or shall fail to correct such filing after notice thereof.

C. Proposed Funding Portal Rule 200 (Funding Portal Conduct)

Based in large part on FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), proposed Funding Portal Rule 200(a) provides that a funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Based in large part on FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), proposed Funding Portal Rule 200(b) provides that no funding portal member shall effect any transaction in, or induce the purchase or sale of, any security by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

Proposed Funding Portal Rule 200(c) (Communications with the Public) is aimed at prohibiting false and misleading statements. The proposed rule is a streamlined version of FINRA Rule 2210 (Communications with the

[29] FINRA Rule 9120 among other things defines ''Review Subcommittee'' to mean a body appointed by the National Adjudicatory Council pursuant to the FINRA Regulation By-Laws.

[30] 15 U.S.C. 78s(d)(2).

Public) and sets forth the following requirements: [31]

• Paragraph 200(c)(1) of the rule defines the term ''funding portal communication'' to mean any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.

• Paragraph 200(c)(2) of the rule addresses content standards. Paragraph 200(c)(2)(A) provides that no funding portal communication may:

○ Include any false, exaggerated, unwarranted, promissory or misleading statement or claim;

○ omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;

○ state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member's business practices; or

○ predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment. Further, paragraph (c)(2)(B) of the rule provides that all funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced. Paragraph (c)(2)(C) of the rule provides that all funding portal member communications must prominently disclose the name of the funding portal member, or the name under which the funding portal member primarily conducts business as disclosed on the member's Form FP–NMA.

• Paragraph 200(c)(3) of the rule addresses issuer communications. Specifically, the rule provides that the content standards of paragraphs (c)(2)(A) and (B) of the rule shall not apply to any communication on the funding portal member's Web site that is prepared solely by an issuer; provided, however, that no funding portal member may include on its Web site any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

D. Proposed Funding Portal Rule 300 (Funding Portal Compliance)

1. Proposed Funding Portal Rule 300(a) (Supervisory System)

Proposed Funding Portal Rule 300(a) is a streamlined version of FINRA's supervision rules and is designed to permit funding portal members flexibility to tailor their supervisory systems to their business models. Paragraph (a)(1) of the rule requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. The rule provides that a funding portal member's supervisory system must provide, at a minimum, for:

• The establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;

• the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and

• reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

Paragraph (a)(2) of the rule is designed to align in large part with the inspections and examinations provisions of proposed Rule 403(c) under Regulation Crowdfunding. Proposed Funding Portal Rule 300(a)(2) provides that a funding portal member must permit the examination and inspection of all of its businesses and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by representatives of FINRA and the Commission, and must cooperate with the examination, inspection or investigation of any persons directly or indirectly using its platform.

2. Proposed Funding Portal Rule 300(b) (Executive Representative)

As discussed above, the General Standards under proposed Funding Portal Rule 100 provide in part that all funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws and FINRA Regulation By-Laws, unless the context requires otherwise. Article IV, Section 3 of the FINRA By-Laws requires, in brief, that each FINRA member appoint and certify to FINRA an executive representative to represent, vote, and act for the member in FINRA affairs. Consistent with FINRA Rule 4517(b),[32] proposed Funding Portal Rule 300(b) requires each funding portal member to designate to FINRA, for purposes of Article IV, Section 3 of the FINRA By-Laws, an executive representative. The rule requires that each funding portal member must update its executive representative designation in the manner prescribed by proposed Funding Portal Rule 300(d), as discussed below.

3. Proposed Funding Portal Rule 300(c) (Reporting Requirements)

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events.[33] The rule is largely based on current FINRA Rule 4530 (Reporting Requirements). Specifically, the rule sets forth the following requirements.

• Paragraph (c)(1) of the rule requires each funding portal member to promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the member knows or should have known of the existence of any of the following:

○ The funding portal member or an associated person of the funding portal member: [34]

➢ Is named as a defendant or respondent in any regulatory proceeding, whether foreign or domestic, involving an alleged violation of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations, standards of conduct or by-laws, or has been found by a regulatory body or self-regulatory organization, whether foreign or domestic, to have violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct; [35]

➢ is the subject of any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets; [36]

[31] FINRA has further streamlined the rule vis-à-vis the version published in the *Notice* to reflect the limited scope of activity permitted by funding portals. *See* note 6 *supra*.

[32] The executive representative requirement is an addition to the proposal vis-à-vis the proposed rules as published in the *Notice*. FINRA believes it is helpful to prospective funding portal members to add this administrative requirement to the Funding Portal Rules for purposes of clarity.

[33] Funding portal members would use the Funding Portal Rule 300(c) Form for their reporting requirements pursuant to the rule. *See* Exhibit 3c of this filing.

[34] *See* proposed Funding Portal Rule 300(c)(1)(A) in Exhibit 5.

[35] *See* proposed Funding Portal Rule 300(c)(1)(A)(i) in Exhibit 5.

[36] *See* proposed Funding Portal Rule 300(c)(1)(A)(ii) in Exhibit 5.

➢ is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities-, insurance-, commodities-, financial- or investment-related regulatory body or self-regulatory organization, whether foreign or domestic, or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization; [37]

➢ is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court; [38]

➢ is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, funding portal, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any regulatory body, jurisdiction or organization, whether foreign or domestic, or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any felony or misdemeanor in a foreign or domestic court; [39]

➢ is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by an investor, broker, dealer or funding portal member that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding $15,000. However, when the funding portal member is the defendant or respondent or is the subject of any claim for damages by an investor, broker, dealer or funding portal member, then the reporting to FINRA shall be required only when such judgment, award or settlement is for an amount exceeding $25,000; [40]

➢ is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a ''statutory disqualification'' as that term is defined in the Exchange Act, provided, however, that this requirement shall not apply to activities with a member or an associated person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or to be associated with a member. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; [41] or

○ an associated person of the funding portal member is the subject of any disciplinary action taken by the funding portal member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of $2,500, the imposition of fines in excess of $2,500 or is otherwise disciplined in any manner that would have a significant limitation on the individual's activities on a temporary or permanent basis.[42]

• Paragraph (c)(2) of the rule provides that each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the funding portal member has concluded or reasonably should have concluded that an associated person of the funding portal member or the funding portal member itself has violated any securities-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any foreign or domestic regulatory body or self-regulatory organization.

• Paragraph (c)(3) of the rule provides each person associated with a funding portal member must promptly report to the funding portal member the existence of any of the events set forth in paragraph (c)(1)(A) of the rule.

• Paragraph (c)(4) of the rule provides that nothing contained in the rule shall eliminate, reduce or otherwise abrogate the responsibilities of a funding portal member to promptly disclose required information on SEC Form Funding Portal as applicable, to make any other required filings or to respond to FINRA with respect to any investor complaint, examination or inquiry. The rule provides that, in addition, a member need not report an event otherwise required to be reported under paragraph (c)(1)(A) of the rule if the member discloses the event on SEC Form Funding Portal, consistent with the requirements of that form, or as required pursuant to proposed Funding Portal Rule 800(b)(2).[43]

• Paragraph (c)(5) of the rule provides that, for purposes of the rule, Supplementary Material .01 through .07, .09 and .10 of FINRA Rule 4530 (the ''Supplementary Material'') shall apply,[44] provided, however, that, as the context requires:

○ the term ''member'' as used in the Supplementary Material shall mean ''funding portal member'' as defined pursuant to proposed Funding Portal Rule 100(b);

○ the term ''associated person'' as used in the Supplementary Material shall mean ''associated person of a funding portal member'' or ''person associated with a funding portal member'' as defined pursuant to proposed Funding Portal Rule 100(b);

○ Supplementary Material .01 shall apply to paragraphs (c)(1)(B) and (c)(2) of proposed Funding Portal Rule 300;

○ Supplementary Material .02 and .03 shall apply to paragraphs (c)(1)(A)(i) and (c)(2) of the rule;

○ Supplementary Material .05 and .07 shall apply to paragraphs (c)(1) and (c)(2) of the rule;

○ Supplementary Material .06 shall apply to paragraph (c)(1)(A)(vi) of the rule; and

○ Supplementary Material .10 shall apply to paragraphs (c)(1)(A)(i) and (c)(1)(A)(iii) of the rule.

[37] *See* proposed Funding Portal Rule 300(c)(1)(A)(iii) in Exhibit 5.

[38] *See* proposed Funding Portal Rule 300(c)(1)(A)(iv) in Exhibit 5.

[39] *See* proposed Funding Portal Rule 300(c)(1)(A)(v) in Exhibit 5.

[40] *See* proposed Funding Portal Rule 300(c)(1)(A)(vi) in Exhibit 5.

[41] *See* proposed Funding Portal Rule 300(c)(1)(A)(vii) in Exhibit 5.

[42] *See* proposed Funding Portal Rule 300(c)(1)(B) in Exhibit 5.

[43] As further discussed below, proposed Funding Portal Rule 800(b) addresses the public disclosure of information on funding portals by FINRA and requires, among other things, that funding portal members provide and update information regarding statutory disqualifications.

[44] The Supplementary Materials provide additional guidance as to specified requirements under the rule. Supplementary Materials .01 and .02 address members' conclusions of violative conduct. Supplementary Material .03 addresses the meaning of the term ''found'' as used in the specified provisions of the rule. Supplementary Material .04 addresses the meaning of the term ''regulatory body'' for purposes of the rule. Supplementary Material .05 provides additional guidance as to reporting of individual and related events. Supplemental Material .06 addresses the calculation of monetary thresholds. Supplementary Material .07 addresses former associated persons. Supplementary Material .09 defines the meaning of the term ''financial related'' for purposes of the rule. Supplementary Material .10 provides guidance as to findings and actions by FINRA.

4. Proposed Funding Portal Rule 300(d) (Contact Information Requirements)

Proposed Funding Portal Rule 300(d), based in large part on the contact information requirements set forth in FINRA Rule 4517(c), is designed to require funding portal members to report to FINRA specified contact information. Specifically, the rule provides:

- Each funding portal member must report to FINRA all contact information required by FINRA through such means as FINRA may specify.
- Each funding portal member must promptly update its required contact information (including its executive representative designation and contact information as required by Article IV, Section 3 of the FINRA By-Laws), but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its required contact information, through such means as FINRA may specify, within 17 business days after the end of each calendar year.
- Each funding portal member must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

5. Proposed Funding Portal Rule 300(e) (Statement of Gross Revenue)

Proposed Funding Portal Rule 300(e) requires each funding portal member each year to report to FINRA, in the manner prescribed by FINRA, the member's gross revenue on Form FP-Statement of Revenue, no later than 60 calendar days following each calendar year-end.[45] The rule requires that the statement of gross revenue must be prepared in accordance with U.S. Generally Accepted Accounting Principles.

6. Proposed Funding Portal Rule 300(f) (Record of Associated Persons of the Funding Portal Member)

Proposed Funding Portal Rule 300(f) is based in large part on SEA Rule 17a–3(a)(12)(ii) (17 CFR 240.17a–3(a)(12)(ii)), which requires broker-dealers to make and keep current a record listing every associated person of the broker-dealer. FINRA believes that requiring funding portals to keep such a record is prudent both for supervisory and regulatory oversight purposes.[46] The rule requires each funding portal member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires each funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place, which aligns with the retention period that the SEC has prescribed for records that funding portals would have to make and preserve pursuant to proposed Rule 404 under Regulation Crowdfunding.

E. Proposed Funding Portal Rule 800 (Investigations and Sanctions)

1. Proposed Funding Portal Rule 800(a) (Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals)

Proposed Funding Portal Rule 800(a) is designed to provide that funding portal members will be subject to specified FINRA rules governing investigations and sanctions. Specifically, the rule provides that, except for FINRA Rules 8110 (Availability of Manual to Customers), 8211 (Automated Submission of Trading Data Requested by FINRA), 8213 (Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by FINRA) and 8312 (FINRA BrokerCheck Disclosure),[47] all funding portal members shall be subject to the FINRA Rule 8000 Series, unless the context requires otherwise, provided, however, that:

- The term ''member'' as used in the FINRA Rule 8000 Series shall mean ''funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the term ''associated person'' as used in the FINRA Rule 8000 Series shall mean ''associated person of a funding portal member'' or ''person associated with a funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the terms ''rules'' and ''FINRA rules'' as used in the FINRA Rule 8000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 8210(d):[48]
  - a notice under FINRA Rule 8210 shall be deemed received by the funding portal member to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person who is currently associated with a funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person upon personal service, as set forth in FINRA Rule 9134(a)(1).[49] The rule further provides that if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person currently associated with the funding portal member has actual knowledge that the funding portal member's address in the SEC Form Funding Portal is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(i) the last known business address of the funding portal member as reflected in the SEC Form Funding Portal; and

(ii) any other more current address of the funding portal member or the person currently associated with the funding portal member known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice; and

[45] The requirement to submit the Statement of Gross Revenue using Form FP-Statement of Revenue is an addition to the proposal vis-à-vis the proposed rules as published in the *Notice.* Proposed Form FP-Statement of Revenue is set forth in Exhibit 3d of this filing. The Statement of Gross Revenue will be used to determine a funding portal member's annual fees, which FINRA is establishing as part of a separate rulemaking. *See* note 12 *supra.*

[46] Proposed Funding Portal Rule 300(f) is an addition to the proposal vis-à-vis the proposed rules as published in the *Notice.* FINRA believes the requirement is a useful complement to proposed Rule 404 under the SEC's Regulation Crowdfunding, which sets forth specified records requirements for funding portals but does not include the requirement as to listing associated persons of the funding portal.

[47] FINRA does not propose to apply FINRA Rule 8110 as part of the Funding Portal Rules as the rule addresses availability of the complete FINRA Manual and FINRA is not proposing to apply the complete Manual to funding portal members. FINRA Rules 8211 and 8213 address trading data and are not applicable to funding portals by virtue of the limited nature of their business. With respect to FINRA Rule 8312, as discussed below, FINRA is proposing Funding Portal Rule 800(b) as a streamlined version of the rule to apply to funding portal members.

[48] FINRA Rule 8210(d) addresses notices mailed or otherwise transmitted under the rule.

[49] FINRA Rule 9134 addresses methods of and procedures for service for purposes of the Rule 9000 Series.

○ if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person knows that the funding portal member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the funding portal member or person, and any notice served upon counsel shall be deemed received by the funding portal member or person.

2. Proposed Funding Portal Rule 800(b) (Public Disclosure of Information on Funding Portals)

Proposed Funding Portal Rule 800(b) is a streamlined version of FINRA Rule 8312 (FINRA BrokerCheck Disclosure) and addresses specified information that FINRA shall make available to the public.[50] Specifically, paragraph (b)(1) of the rule provides that FINRA may provide access to the public, via an appropriate link on the FINRA Web site, to a funding portal member's current SEC Form Funding Portal, including amendments and registration withdrawal requests, as filed with the SEC pursuant to SEC Regulation Crowdfunding, in the form made publicly available by the SEC. The rule provides that, with respect to a former funding portal member, FINRA may provide similar access to the public to the former funding portal member's most recent SEC Form Funding Portal, and any amendments and registration withdrawal requests, as filed with the SEC.

Paragraph (b)(2) of the rule provides that FINRA shall make available to the public information filed by a funding portal member, in a format to be prescribed by FINRA, indicating whether the funding portal member or any associated person of the funding portal member is subject to an event described in Section 3(a)(39) of the Exchange Act. The rule provides that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Paragraph (b)(3) of the rule provides that, with respect to the information provided pursuant to paragraph (b)(2) of the rule, FINRA shall not make available information reported as a Social Security number, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by FINRA. The rule provides that FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns or information that was reported in error by a funding portal member.

F. Code of Procedure (Proposed Funding Portal Rule 900)

1. Proposed Funding Portal Rule 900(a) (Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals)

Proposed Funding Portal Rule 900(a) is designed to provide that funding portal members will be subject to specified FINRA rules setting forth FINRA's Code of Procedure. Specifically, except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series,[51] the rule provides that all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

- The term ''member'' as used in the FINRA Rule 9000 Series shall mean ''funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the term ''associated person'' as used in the FINRA Rule 9000 Series shall mean ''associated person of a funding portal member'' or ''person associated with a funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the terms ''rules'' and ''FINRA rules'' as used in the FINRA Rule 9000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 9217, a funding portal member may be subject to a fine under FINRA Rule 9216(b) with respect to any of the following:[52]

○ failure to timely submit amendments to SEC Form Funding Portal;

○ Funding Portal Rule 200(c) (Communications with the Public);

○ Funding Portal Rule 300(a)—failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217;

○ Funding Portal Rule 300(c)—failure to timely file reports;

○ failure to provide or update contact information as required by Funding Portal Rule 300(d);

○ Rule 303(f) of SEC Regulation Crowdfunding—confirmation of transactions; and

○ Rule 404 of SEC Regulation Crowdfunding—failure to make and preserve records in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Funding Portal Rules;

- for purposes of FINRA Rules 9134(b)(1) and 9134(b)(2), the residential or business address, as applicable, as reflected in SEC Form Funding Portal, in lieu of the Central Registration Depository, shall be acceptable;
- for purposes of FINRA Rule 9134(b)(2), service on a contact employee, or United States agent for service of process, as set forth in SEC Form Funding Portal, in lieu of Form BD, shall be acceptable;
- for purposes of FINRA Rule 9551(a),[53] FINRA staff may issue a written notice requiring a funding portal member to file communications with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of Funding Portal Rule 200(c);
- for purposes of FINRA Rule 9551(d), the pre-use filing requirement referenced in a notice issued and served under FINRA Rule 9551 shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to FINRA Rule 9559;

[50] FINRA has further streamlined the proposed rule vis-à-vis the version published in the *Notice* in the interest of clarity.

[51] The FINRA Rule 9520 Series addresses ''eligibility proceedings'' in the context of statutory qualifications which, as discussed further below, FINRA is proposing to address under Funding Portal Rule 900(b). FINRA Rule 9557 addresses service of notice to members that are experiencing financial or operational difficulties under net capital or similar financial responsibility requirements. Because funding portals would not be subject to such requirements, Rule 9557 would not be applicable. Similarly, the FINRA Rule 9700 Series addresses the automated quotation, execution or communication systems owned or operated by FINRA, which are outside the scope of funding portal business activity. Accordingly FINRA does not propose to apply the Rule 9700 Series to funding portals.

[52] FINRA Rule 9216(b) sets forth procedures for disposition of specified rule violations designated as minor rule violations pursuant to a plan (referred to as an ''MRVP'') declared effective by the SEC in accordance with SEA Section 19(d)(1) (15 U.S.C. 78s(d)(1)) and Rule 19d–1(c)(2) (17 CFR 240.19d–1(c)(2)) thereunder. FINRA Rule 9217 sets forth the rules that are eligible for such disposition. FINRA's MRVP allows FINRA to impose a fine of up to $2,500 on any firm it regulates or person associated with a FINRA regulated firm for a minor violation of an eligible rule.

[53] FINRA Rule 9551 addresses expedited proceedings by FINRA for failure to comply with public communication standards.

• for purposes of proceedings pursuant to FINRA Rule 9810(a),[54] proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and SEA Rule 10b–5 (17 CFR 240.10b–5), Funding Portal Rule 200(a) (if the alleged violation is misuse of investor funds or assets, or based on violations of Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Funding Portal Rule 200(b).

2. Proposed Funding Portal Rule 900(b) (Eligibility Proceedings)

Proposed Funding Portal Rule 900(b) is a streamlined version of the current FINRA Rule 9520 Series. The rule sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. Such actions hereinafter are referred to as ''eligibility proceedings.'' The rule requirements are set forth below.

• *Definitions (Proposed Funding Portal Rule 900(b)(2))*

Paragraph (b)(2) of the rule sets forth the following definitions:

○ The term ''Application'' means FINRA's Form MC–400 for individuals or Form MC–400A for funding portal members, filed with the Department of Registration and Disclosure (''RAD'').

○ The term ''disqualified funding portal member'' means a funding portal member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.

○ The term ''disqualified person'' means an associated person of a funding portal member or person seeking to become an associated person of a funding portal member who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the FINRA By-Laws.

○ The term ''sponsoring funding portal member'' means the funding portal member or applicant for membership pursuant to Funding Portal Rule 110(a) that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

• *Initiation of Eligibility Proceeding; Department of Member Regulation Consideration (Proposed Funding Portal Rule 900(b)(3))*

Proposed Funding Portal Rule 900(b)(3)(A) addresses initiation of eligibility proceedings.

○ *Issuance of Notice of Disqualification or Ineligibility*

Proposed Funding Portal Rule 900(b)(3)(A)(i) provides that if FINRA staff has reason to believe that a disqualification exists or that a funding portal member or person associated with a funding portal member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the funding portal member or applicant for funding portal membership under proposed Funding Portal Rule 110(a). The rule provides that the notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to funding portal members or applicants for funding portal membership when no Application is required pursuant to proposed Funding Portal Rule 900(b)(7), as discussed below.

○ *Notice Regarding a Funding Portal Member*

Proposed Funding Portal Rule 900(b)(3)(A)(ii) provides that a notice issued to a disqualified funding portal member shall state that the disqualified funding portal member may apply for relief by filing an Application or, in the case of a matter set forth in proposed Funding Portal Rule 900(b)(8)(A), as discussed below, a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the membership of the funding portal member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

○ *Notice Regarding an Associated Person*

Proposed Funding Portal Rule 900(b)(3)(A)(iii) provides that a notice issued regarding a disqualified person to a funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) shall state that such funding portal member or applicant for funding portal membership may file an Application on behalf of itself and such person or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the funding portal member may not associate or continue to associate with the disqualified person, unless the Department of Member Regulation grants an extension for good cause shown.

○ *Service*

Paragraph (b)(3)(A)(iv) of the proposed rule provides that a notice issued under paragraph (b)(3)(A) of the rule shall be served by facsimile or electronic mail, or pursuant to FINRA Rules 9131[55] and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a).

• *Obligation of Funding Portal Member To Initiate Eligibility Proceeding (Proposed Funding Portal Rule 900(b)(4))*

Proposed Funding Portal Rule 900(b)(4)(A) addresses the obligation of a funding portal member to initiate eligibility proceedings. Specifically, the rule provides that a funding portal member must file an Application or, in the case of a matter set forth in proposed Funding Portal Rule 900(b)(8)(A) a written request for relief, with RAD, if the funding portal member determines prior to receiving a notice under paragraph (b)(3)(A) of this Rule that:

○ It has become a disqualified funding portal member;

○ A person associated with such funding portal member or whose association is proposed by an applicant for funding portal membership under Funding Portal Rule 110(a) has become a disqualified person; or

○ The funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) wishes to sponsor the association of a person who is a disqualified person.

• *Withdrawal of Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(5))*

Proposed Funding Portal Rule 900(b)(5)(A) provides that a funding portal member may withdraw its Application or, as set forth in proposed Funding Portal Rule 900(b)(8)(A) its written request for relief, at any time prior to an appeal by filing a written notice with the Department of Member Regulation and RAD pursuant to FINRA Rules 9135 (Filing of Papers with Adjudicator: Procedure), 9136 (Filing of Papers: Form), and 9137 (Filing of

[54] FINRA Rule 9810 addresses initiation of cease and desist proceedings by FINRA for specified violations.

[55] FINRA Rule 9131 addresses service of a complaint by FINRA for purposes of the Rule 9000 Series.

Papers: Signature Requirement and Effect), as adopted pursuant to Funding Portal Rule 900(a). The rule provides that a funding portal member may withdraw its Application after the start of an appeal but prior to the issuance of a decision by the National Adjudicatory Council by filing a written notice with the Department of Member Regulation and the Office of General Counsel pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a).

- *Ex Parte Communications (Proposed Funding Portal Rule 900(b)(6))*

Proposed Funding Portal Rule 900(b)(6) provides that the prohibitions against ex parte communications set forth in FINRA Rule 9143, as adopted pursuant to Funding Portal Rule 900(a), shall become effective under Funding Portal Rule 900(b) when FINRA staff has initiated the eligibility proceeding and FINRA staff has knowledge that a funding portal member intends to file an Application or written request for relief pursuant to Funding Portal Rule 900(b).

- *Relief From Eligibility Proceedings (Proposed Funding Portal Rule 900(b)(7))*

Proposed Funding Portal Rule 900(b)(7) provides that a funding portal member is not required to file an Application if: [56]

○ The disqualification arises solely from findings in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, the Commodity Futures Trading Commission or a self-regulatory organization, and the sanction is no longer in effect.[57]

○ The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(i), and the bar is no longer in effect, provided that there is no final order specified in Exchange Act Section 15(b)(4)(H)(ii), in which case paragraph (b)(7)(C) of the rule, as discussed below, applies.[58]

○ The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(ii), and:

➢ the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; or

➢ the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered ten or more years ago.[59]

○ The disqualification arises solely under Exchange Act Section 3(a)(39)(E), and the disqualified funding portal member or person is subject to the disqualification solely because the member or person has associated with it any person who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by subparagraph (A), (B), (C), or (D) of Exchange Act Section 3(a)(39), unless the associated person controls such disqualified member or person, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member.[60]

- *Matters That May Be Approved After the Filing of an Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(8))*

Paragraph (b)(8)(A) of the proposed rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified funding portal member or a sponsoring funding portal member without the filing of an Application by such disqualified funding portal member or sponsoring funding portal member if a disqualified funding portal member or disqualified person is subject to one or more of the following conditions, but is not otherwise subject to disqualification:

○ An injunction as described in Section 15(b)(4)(C) of the Exchange Act that was entered ten or more years prior to the proposed admission or continuance; or

○ a request to change the supervisor of a disqualified person.

Paragraph (b)(8)(B) of the rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve, upon the filing of an Application by a disqualified funding portal member or a sponsoring funding portal member and written consent to a heightened supervisory plan, all Applications seeking relief from disqualifications arising under Section 3(a)(39) of the Exchange Act.

Paragraph (b)(8)(B)(i) of the rule provides that, by the submission of a written consent to a heightened supervisory plan, the disqualified funding portal member, sponsoring funding portal member and disqualified person waive:

○ The right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

○ any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim bias or prejudgment by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's approval or the supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan; and

○ any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, as adopted pursuant to Funding Portal Rule 900(a), in connection with such person's or body's participation in discussions regarding the terms and conditions of the approval or supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan.

Paragraph (b)(8)(B)(ii) of the rule provides that if the heightened supervisory plan is rejected, the disqualified funding portal member, sponsoring funding portal member, or disqualified person shall be bound by the waivers made under paragraph (b)(8)(B)(i) of the rule for conduct by persons or bodies occurring during the period beginning on the date the heightened supervisory plan was submitted and ending upon the rejection of the heightened supervisory plan and shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below.

[56] The disqualifications set forth under paragraph (b)(7) of the rule reflect the three additional categories of disqualification that FINRA addressed in 2009, specifically, willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted by the Sarbanes-Oxley Act, and associations with specified other persons subject to statutory disqualification. *See Regulatory Notice* 09–19 (Eligibility Proceedings) (April 2009). *See also* Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1; File No. SR–FINRA–2008–045); Securities Exchange Act Release No. 59722 (April 7, 2009), 74 FR 17267 (April 14, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR–FINRA–2009–022).

[57] *See* proposed Funding Portal Rule 900(b)(7)(A) in Exhibit 5.

[58] *See* proposed Funding Portal Rule 900(b)(7)(B) in Exhibit 5.

[59] *See* proposed Funding Portal Rule 900(b)(7)(C) in Exhibit 5.

[60] *See* proposed Funding Portal Rule 900(b)(7)(D) in Exhibit 5.

- *Department of Member Regulation Consideration of Applications for New Funding Portal Members (Proposed Funding Portal Rule 900(b)(9))*

Proposed Funding Portal Rule 900(b)(9) provides that in all instances where FINRA receives a Form MC–400 or Form MC–400A under this rule, and such Application is submitted on behalf of an applicant for membership as a funding portal member under Funding Portal Rule 110(a), the Department of Member Regulation shall defer a decision on such Form MC–400 or Form MC–400A until such time as FINRA has issued a determination on the application submitted pursuant to Funding Portal Rule 110(a).

- *Rights of Disqualified Funding Portal Member, Sponsoring Funding Portal Member, Disqualified Person, and Department of Member Regulation (Proposed Funding Portal Rule 900(b)(10))*

Proposed Funding Portal Rule 900(b)(10)(A) provides that in the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to Funding Portal Rule 900(b)(8)(A), the disqualified funding portal member or sponsoring funding portal member may file an Application under Funding Portal Rule 900(b)(8)(B). The rule provides that the Department of Member Regulation may require a disqualified funding portal member or sponsoring funding portal member to file an Application with RAD, notwithstanding the provisions of proposed Funding Portal Rule 900(b)(8)(A).

FINRA has revised paragraph (b)(10)(B) of the rule vis-à-vis the proposal as published in the *Notice* so as to better align the rule with existing provisions for broker-dealer members. Based in large part on FINRA Rule 9522(e)(3), proposed Funding Portal Rule 900(b)(10)(B), as revised, provides that, in the event the Department of Member Regulation does not approve an Application pursuant to Funding Portal Rule 900(b)(8)(B), the Department of Member Regulation shall inform the disqualified funding portal member or sponsoring funding portal member of its decision in writing. Further, as revised, the rule provides that the decision shall explain in detail the reason for denial. The rule states that the disqualified funding portal member or sponsoring funding portal member shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below. If not timely appealed pursuant to paragraph (b)(11) of the rule, the decision issued by the Department of Member Regulation shall constitute final action of FINRA and shall become effective immediately.

- *Appeal of Department of Member Regulation's Decision To Deny an Application or a Written Request for Relief (Proposed Funding Portal Rule 900(b)(11))*

Paragraph (b)(11) of the proposed rule addresses appeal of the Department of Member Regulation's decision to deny an application or a written request for relief. Based in large part on FINRA Rules 9524 and 9525, FINRA has revised the proposed rule vis-à-vis the proposal as published in the *Notice* so as to better align the rule with existing provisions for broker-dealer members. As revised, the proposed rule sets forth among other things procedures for a hearing when one is requested, including notice of the hearing, the rights of parties at the hearing, transmission of documents, extensions of time, postponements and adjournments, and requirements as to the hearing record. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

○ Notice (Proposed Funding Portal Rule 900(b)(11)(A))

Paragraph (b)(11)(A) of the proposed rule provides that a funding portal member or sponsoring funding portal member may file a written notice of appeal within 14 days after service of a decision issued under Funding Portal Rule 900(b). The rule provides that the notice of appeal shall be filed with the Office of General Counsel, with a copy to the Department of Member Regulation. The notice of appeal shall state with specificity why the appellant believes the Department of Member Regulation's decision is not consistent with the public interest or should otherwise be set aside, and shall state whether a hearing is requested. The notice of appeal shall be signed by the appellant.

○ Stay of Decision (Proposed Funding Portal Rule 900(b)(11)(B))

Paragraph (b)(11)(B) of the proposed rule provides that an appeal of the Department of Member Regulation's decision to deny an Application or a written request for relief shall operate as a stay of that decision while the appeal is pending.

○ Subcommittee (Proposed Funding Portal Rule 900(b)(11)(C))

Paragraph (b)(11)(C) of the proposed rule provides that after an appellant files a timely appeal, the National Adjudicatory Council or the Statutory Disqualification Committee shall appoint two or more members, who shall be current or former members of the National Adjudicatory Council, Statutory Disqualification Committee, or former Directors or Governors, to form a subcommittee. The rule provides that the subcommittee shall conduct a hearing when one is requested, review the appeal, and recommend a decision to the Statutory Disqualification Committee.

○ Notice of Hearing and Rights of Parties at Hearing (Proposed Funding Portal Rule 900(b)(11)(D))

Paragraph (b)(11)(D) of the proposed rule provides that, if a hearing is requested, the hearing shall be held no later than 90 days after the filing of a notice of appeal unless the subcommittee determines that there is good cause shown for extending the time period. The rule provides that the appellant and the Department of Member Regulation shall be notified via mail, email, facsimile, or overnight courier of the location, time, and date of the hearing not less than 14 business days before the hearing, unless the parties agree to shorten the time period or where good cause has been shown for an expedited proceeding under paragraph (b)(11)(F) of the rule as discussed further below. The appellant and the Department of Member Regulation shall be entitled to be heard in person at a hearing, to be represented by an attorney, and to submit any relevant evidence.

○ Withdrawal or Abandonment (Proposed Funding Portal Rule 900(b)(11)(E))

Paragraph (b)(11)(E) of the proposed rule provides that, if an appellant abandons or withdraws the Application, the Department of Member Regulation's decision shall constitute final action by FINRA.

○ Expedited Review (Proposed Funding Portal Rule 900(b)(11)(F))

Paragraph 900(b)(11)(F) of the proposed rule provides that where the failure to promptly review a decision to deny an Application would unduly or unfairly harm the funding portal member or sponsoring funding portal member, the subcommittee shall provide an expedited hearing upon a showing of good cause. The subcommittee would have the authority to set deadlines to prepare for the expedited hearing that would be shorter than the dates for a non-expedited review under Funding Portal Rule 900(b)(11)(G).

○ Transmission of Documents (Proposed Funding Portal Rule 900(b)(11)(G))

Paragraph (b)(11)(G)(i) of the proposed rule provides that, within 14 days after the filing of a notice of appeal, the Department of Member Regulation shall transmit to the Office of General Counsel, and serve on the appellant to the extent that any such documents have not been previously provided, copies of all documents that were considered in connection with the Department of Member Regulation's decision to deny the Application and an index to the documents.

Paragraph (b)(11)(G)(ii) of the proposed rule provides that, not less than 10 business days before the hearing, the Department of Member Regulation and the appellant shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. The rule provides that the exhibit and witness lists shall be served by email, facsimile or overnight courier.

Paragraph (b)(11)(G)(iii) of the proposed rule provides that, at any time prior to the issuance of its recommendation, the subcommittee may order the parties to supplement the record with any additional information that the subcommittee deems necessary. The rule provides that the subcommittee may also order the appellant and the Department of Member Regulation to file legal briefs.

○ Extensions of Time, Postponements, and Adjournments (Proposed Funding Portal Rule 900(b)(11)(H))

Paragraph (b)(11)(H) of the proposed rule provides that the subcommittee may shorten any time limits prescribed by these rules for the filing of any papers after obtaining consent of all the parties, and may postpone or adjourn any hearing. The rule provides that the subcommittee may extend any time limits prescribed by these rules for the filing of any papers.

○ Recordation of Hearing (Proposed Funding Portal Rule 900(b)(11)(I))

Paragraph (b)(11)(I) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter.

○ Record (Proposed Funding Portal Rule 900(b)(11)(J))

Paragraph (b)(11)(J) of the proposed rule provides that the record shall consist of:

➢ the decision issued under Funding Portal Rule 900(b);[61]

➢ all documents relied upon in issuing the decision issued under Funding Portal Rule 900(b);[62]

➢ the notice of appeal;[63]

➢ any other submissions by the appellant and the Department of Member Regulation;[64]

➢ any evidence considered at the hearing;[65] and

➢ the transcript of the hearing and any corrections thereto.[66]

○ Evidence Not Admitted (Proposed Funding Portal Rule 900(b)(11)(K))

Paragraph (b)(11)(K) of the proposed rule provides that evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the Office of General Counsel, as custodian of the record, until the date when FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

○ Recommendation (Proposed Funding Portal Rule 900(b)(11)(L))

Paragraph (b)(11)(L) of the proposed rule provides that, on the basis of the record, the subcommittee shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the subcommittee, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council.

○ Decision (Proposed Funding Portal Rule 900(b)(11)(M))

Paragraph (b)(11)(M) of the proposed rule provides that, after considering all the matters presented in the request for relief, the Statutory Disqualification Committee's recommendation, the public interest and the protection of investors, the National Adjudicatory Council may affirm, modify, or reverse in writing the Department of Member Regulation's decision. The rule provides that the National Adjudicatory Council shall provide its proposed decision to the FINRA Board. If the FINRA Board does not call the decision for review, the decision shall be served pursuant to Funding Portal Rule 900(b)(3)(A)(iv) and shall constitute final action of FINRA. A decision to affirm the Department of Member Regulation's decision shall be effective immediately. A decision to approve the Application shall be effective after the SEC issues an order or acknowledgement letter, as the case may be.

• *Discretionary Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12))*

○ Call for Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12)(A))

Paragraph (b)(12)(A) of the proposed rule provides that a Governor may call a proposed National Adjudicatory Council decision regarding an eligibility proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b)(12)(B) of the rule, as discussed below.

○ 15 Day Period; Waiver (Proposed Funding Portal Rule 900(b)(12)(B))

Paragraph (b)(12)(B) of the proposed rule provides that a Governor shall make his or her call for review not later than the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council. The rule provides that by a unanimous vote of the FINRA Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

○ Review at Next Meeting (Proposed Funding Portal Rule 900(b)(12)(C))

Paragraph (b)(12)(C) of the proposed rule provides that if a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b)(12)(B) of the rule, the FINRA Board shall review the eligibility proceeding not later than the next meeting of the FINRA Board. The FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

○ Decision of FINRA Board, Including Remand (Proposed Funding Portal Rule 900(b)(12)(D))

Paragraph (b)(12)(D) of the rule provides that, after review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the eligibility proceeding with instructions.

○ Issuance of Decision (Proposed Funding Portal Rule 900(b)(12)(E))

Paragraph (b)(12)(E) of the proposed rule provides that the FINRA Board

[61] *See* proposed Funding Portal Rule 900(b)(11)(J)(i) in Exhibit 5.

[62] *See* proposed Funding Portal Rule 900(b)(11)(J)(ii) in Exhibit 5.

[63] *See* proposed Funding Portal Rule 900(b)(11)(J)(iii) in Exhibit 5.

[64] *See* proposed Funding Portal Rule 900(b)(11)(J)(iv) in Exhibit 5.

[65] *See* proposed Funding Portal Rule 900(b)(11)(J)(v) in Exhibit 5.

[66] *See* proposed Funding Portal Rule 900(b)(11)(J)(vi) in Exhibit 5.

shall issue and serve its written decision on the disqualified funding portal member, sponsoring funding portal member, or disqualified person, and the Department of Member Regulation pursuant to FINRA Rules 9132 and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a). The rule provides that the decision shall constitute the final action of FINRA, unless the FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. The rule provides that a decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

- *Application to SEC for Review (Proposed Funding Portal Rule 900(b)(13))*

Proposed Funding Portal Rule 900(b)(13) provides that the right to have any action taken pursuant to this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The rule provides that filing of an application for review shall not stay the effectiveness of final action by FINRA, unless the SEC otherwise orders.

G. Arbitration and Mediation (Proposed Funding Portal Rule 1200)

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure), unless the context requires otherwise. The rule provides that:

- the term ''member'' as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean ''funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the term ''associated person'' as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean ''associated person of a funding portal member'' or ''person associated with a funding portal member'' as defined pursuant to Funding Portal Rule 100(b);
- the terms ''rules'' and ''FINRA rules'' as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include the Funding Portal Rules; and
- the term ''customer'' as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include investors as such term is used throughout the Funding Portal Rules.

Paragraph (b) of the rule addresses predispute arbitration agreements for investor accounts. The rule is a streamlined version of current FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Agreements). Paragraph (b)(1) of the rule provides that any predispute arbitration clause must be highlighted and must be immediately preceded by the following language in outline form:

''This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.''

Paragraph (b)(2)(A) of the rule provides that, in any agreement containing a predispute arbitration agreement, there must be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement must also indicate at what page and paragraph the arbitration clause is located. Paragraph (b)(2)(B) provides that, within 30 days of signing, a copy of the agreement containing any such clause must be given to the investor and the funding portal member must retain proof of delivery or of the investor's acknowledgement of receipt.

Paragraph (b)(3)(A) of the rule provides that, within ten business days of receipt of the investor's request, a funding portal member must provide an investor with a copy of any predispute arbitration clause or investor agreement executed between the investor and the funding portal member. Paragraph (b)(3)(B) provides that, upon request by an investor, a funding portal member must provide the investor with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Paragraph (b)(4) of the rule provides that no predispute arbitration agreement shall include any condition that:

- Limits or contradicts the rules of any self-regulatory organization;
- limits the ability of a party to file any claim in arbitration;
- limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;
- limits the ability of arbitrators to make any award.

Paragraph (b)(5) of the rule provides that, if an investor files a complaint in court against a funding portal member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the funding portal member and the investor, the funding portal member may seek to compel arbitration of the claims that are subject to arbitration. If the funding portal member seeks to compel arbitration of such claims, the funding portal member must agree to arbitrate all of the claims contained in the complaint if the investor so requests.

Paragraph (b)(6) of the rule provides that all agreements must include a statement that ''No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) The class certification is denied; or (ii) the class is decertified; or (iii) the investor is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.''

H. Notification to FINRA in Connection With the JOBS Act (Proposed Funding Portal Rule 4518)

As discussed earlier, under Section 302 of the JOBS Act, an intermediary that engages in transactions involving the offer or sale of securities pursuant to the crowdfunding exemption is required to register with the SEC as a funding portal or broker and to register with an applicable self-regulatory organization.[67] As such, the statute contemplates activity by registered brokers pursuant to Title III of the JOBS Act, subject to specified conditions. In anticipation that registered broker members of FINRA may intend to act as intermediaries for transactions in connection with the crowdfunding exemption, FINRA is proposing to adopt, as part of the FINRA rulebook, new FINRA Rule 4518. The rule would apply to registered broker members. The rule provides that a FINRA member shall notify FINRA, in a manner prescribed by FINRA:

- prior to engaging, for the first time, in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act; or
- within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

Proposed FINRA Rule 4518 is an addition to the proposal vis-à-vis the proposed rule change as published in the *Notice.* FINRA believes the requirement is a useful complement to the Funding Portal Rules, given that it would enable FINRA to keep accurate track as to which of its registered broker members, if any, are engaging in activity in connection with Title III of the JOBS Act and thereby assist FINRA in carrying out its regulatory responsibilities.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[68] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Act, as amended by the JOBS Act, defines the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for registered funding portals.

FINRA believes that the proposal is consistent with the Act because FINRA has written the proposed rules specifically for funding portals, seeking to streamline the rules or otherwise appropriately modify them to reflect the limited nature of funding portal business, as set forth in the Act.

The proposed rules address general standards applicable to funding portals (Funding Portal Rule 100), the member application process for funding portals (Funding Portal Rule 110(a)), and business conduct, including standards of commercial honor and principles of trade (Funding Portal Rule 200(a)), prohibitions against the use of manipulative, deceptive or other fraudulent devices (Funding Portal Rule 200(b)) and communications with the public (Funding Portal Rule 200(c)). The proposed rules further address supervisory systems (Funding Portal Rule 300(a)), designation of an executive representative (Funding Portal Rule 300(b)), reporting requirements (Funding Portal Rule 300(c)), contact information requirements (Funding Portal Rule (300(d)), submission of revenue statements to FINRA (Funding Portal Rule 300(e) and requirements as to making and keeping current records listing associated persons of the funding portal (Funding Portal Rule 300(f)). In addition, the rules address the application of FINRA's investigations and sanctions procedures to funding portals (Funding Portal Rule 800(a)), public disclosure by FINRA of information on funding portals (Funding Portal Rule 800(b)), the application of FINRA's Code of Procedure to funding portals (Funding Portal Rule 900(a)), eligibility proceedings in connection with statutory disqualifications under the Act (Funding Portal Rule 900(b)), the application of FINRA's Arbitration and Mediation Procedures to funding portals (Funding Portal Rule 1200(a) and rules governing predispute arbitration agreements for investor accounts (Funding Portal Rule 1200(b)).

Consistent with the Act, the proposed rules prohibit fraudulent and manipulative acts and practices and require that funding portal members observe just and equitable principles of trade, thereby conducing to the protection of investors. The proposal is consistent with the public interest because the streamlined requirements as set forth in the proposal, considered in combination with and in view of the restrictions imposed on funding portal business by the Act, are consistent with the Congressional intent of the JOBS Act, which sought to minimize regulatory burdens on funding portals and thereby enable them to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Act, as amended by the JOBS Act, limits the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for funding portals. As such, FINRA has designed the proposed rules to streamline or otherwise appropriately modify existing FINRA rules to reflect the limited scope of business activity permitted to funding portals under the JOBS Act.

FINRA believes that the streamlined approach should minimize the potential costs and burdens on prospective funding portal members at this early stage of development of funding portal business, thereby helping to effectuate the Congressional intent to enable funding portals to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding. Further, FINRA believes the streamlined approach is appropriate given that regulatory experience with funding portals is at an early stage. Following are several requirements that FINRA has streamlined for funding portals vis-à-vis requirements that currently apply to broker-dealers:

- The proposed membership application process (MAP) under Funding Portal Rule 110(a) shortens the time frame for the Department of Member Regulation to provide a

[67] *See* Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d–1(a)(1) and (2)).

[68] 15 U.S.C. 78*o*–3(b)(6).

decision on a funding portal MAP to 60 days, versus 180 days under the broker-dealer MAP rules. FINRA believes that this shortened time frame is appropriate both in view of the limited nature of funding portal business and in the interest of enabling funding portals to begin their operations expeditiously, thereby supporting a basic purpose of the JOBS Act.

• The proposed MAP streamlines and consolidates, from 14 to five, the NASD Rule 1010 Series standards for granting or denying a funding portal's membership application. FINRA believes that this is consistent with the rationale underlying the shortened time frame for the funding portal MAP, as discussed above, which should ameliorate potential burdens on funding portal members.

• The proposed Form FP–NMA and Form FP–CMA require significantly less information than the broker-dealer counterpart forms, which FINRA believes is consistent with the limited scope of business to be conducted by funding portals. FINRA believes that, similar to the shortened MAP time frame and streamlined standards for granting or denying an application, this again ameliorates potential burdens on funding portal members.

• The proposal imposes no broker-dealer equivalent licensing or examination requirement on associated persons of funding portal members. FINRA believes that imposing examination and licensing requirements on funding portal members at this stage is not necessary in light of the limited activities of funding portals. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.

• The proposal as set forth in *Regulatory Notice* 13–34 would have required funding portal members to maintain fidelity bond coverage. As discussed earlier, FINRA is not proposing at this time a fidelity bond requirement. FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.

• FINRA is not proposing at this time net capital or similar financial responsibility requirements for funding portals. FINRA believes that this approach is appropriate at this time in view of the limited nature of funding portal business, in particular the JOBS Act prohibition against funding portals holding, managing, possessing, or otherwise handling investor funds and securities. Again, however, FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rules, the regulatory objective of the rulemaking, the economic baseline of analysis, and the economic impacts.

A. Need for the Rules

Section 3(h)(2) of the Exchange Act,[69] as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals.

Under Title III of the JOBS Act, a funding portal is a new type of intermediary the business activities of which are of limited scope, as defined by the JOBS Act, relative to entities that register as brokers. Among other things, the JOBS Act adds Section 4(a)(6) to the Securities Act,[70] which creates an exemption (the ''crowdfunding exemption'') from registration requirements under the Securities Act for securities offered and sold pursuant to the crowdfunding exemption. Broadly, the crowdfunding exemption permits an issuer to offer and sell up to $1 million in securities over a 12-month period. The amount of any such security sold to an investor by an issuer is not permitted to exceed specified thresholds. Further, the issuer must comply with other specified requirements under the JOBS Act and Commission rules. Any offering pursuant to the crowdfunding exemption must be conducted through a broker or a funding portal that is registered with the SEC.

Under the JOBS Act, a funding portal must become a member of a national securities association that is registered under Section 15A of the Exchange Act. FINRA is the only national securities association that is registered under Section 15A of the Exchange Act.

On October 23, 2013, the SEC proposed rules [71] to require registration of funding portals and to implement the provisions of Title III of the JOBS Act. Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding as adopted by the SEC and to apply for FINRA membership.

B. Regulatory Objective

The crowdfunding exemption is designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The exemption creates a regulatory pathway for funding portals to facilitate the offer and sale of securities, as registered funding portals, without being required to register with the SEC as brokers,[72] provided they comply with specified limitations on their business activity.[73]

FINRA's proposal aims to create a streamlined set of regulations for funding portals with rules that reflect the limited scope of activity permitted by funding portals while also maintaining investor protection.

C. Economic Baseline

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption would be required to register with the SEC as brokers. The FINRA rules for registered brokers are intended to address a wider range of activities than is permissible to funding portals, and would place restrictions and costs not associated with such firms' crowdfunding activities. If all crowdfunding intermediaries were subject to the full requirements that apply to registered brokers, there might be several unintended consequences. First, the regulatory costs to operate the crowdfunding intermediary would likely be high, potentially restricting the number of registered crowdfunding intermediaries. These costs would include, but are not limited to, capital requirements, compliance costs and other restrictions on activities. Second, and relatedly, higher compliance costs may limit the activities of those crowdfunding intermediaries that do choose to register as these may restrict financial and other available resources. Third, limited numbers of registered crowdfunding intermediaries may reduce competition in the crowdfunding market and lead to less efficient capital allocation.

In addition to crowdfunding intermediaries, the absence of the proposed rules may also have an impact on: issuers, typically startups and small

[69] 15 U.S.C. 78c(h)(2).

[70] 15 U.S.C. 77d(a)(6).

[71] *See* note 8 *supra.*

[72] Exchange Act Section 3(h)(1) (15 U.S.C. 78c(h)(1)) directs the Commission by rule to exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1) (15 U.S.C. 78*o*(a)(1)), provided that the funding portal: (1) remains subject to the examination, enforcement and other rulemaking authority of the Commission; (2) is a member of a registered national securities association; and (3) is subject to other requirements that the Commission determines appropriate.

[73] *See* note 6 *supra.*

businesses seeking to raise capital by issuing securities; investors that purchase or may consider purchasing securities in such offerings; and other capital providers, broker-dealers and finders that currently participate in private offerings.

For the issuers seeking to raise capital through securities-based crowdfunding in reliance on the crowdfunding exemption, limited numbers of registered crowdfunding intermediaries may result in higher capital raising costs, decreased opportunities for selling securities through a given registered funding portal, or an aggregate reduction in the capacity of registered crowdfunding intermediaries. Higher regulatory costs to registered intermediaries may also be passed on to issuers. All of these impacts would collectively make it more difficult for startups and small businesses to efficiently find capital for their operations.

Limited numbers of registered intermediaries may also limit investor access to securities-based crowdfunding offerings. In addition, higher capital raising costs to issuers and higher regulatory costs to registered intermediaries could be passed on to potential investors.

The absence of the proposed Funding Portal Rules also might have an effect on broker-dealers and finders participating in private offerings. As discussed above, in the absence of FINRA's Funding Portal Rules, issuers intending to raise capital in reliance on the crowdfunding exemption may face higher costs. Some of these issuers may instead choose to raise capital through private offerings with the assistance of broker-dealers and finders. This could increase the revenue of finders and broker-dealers in the market for private offerings, but less competition in the fundraising market and greater restrictions on participation of investors may lead to less efficient allocation of capital.

D. Economic Impacts

The proposed rules are intended to provide investors with appropriate protections by applying the relevant controls and oversight to the limited activities of funding portals. FINRA recognizes that there are potential costs associated with compliance with the proposed rules. Prospective funding portal members will need to become members of FINRA and establish compliance procedures to comply with the proposed rules, both on an initial and ongoing basis. The proposed rules may also have an impact on other market participants such as issuers and investors. Benefits of the proposed rules may include greater competition among crowdfunding intermediaries, better market oversight, and investor protection for those investing in offerings made through funding portals. Costs and benefits associated with FINRA's proposed rules are only a subset of the costs and benefits associated with securities-based crowdfunding regulations. Regulatory outcomes will depend on many other factors including the SEC rules.

1. The SEC's Economic Analysis

The SEC's Regulation Crowdfunding Proposal [74] includes a detailed economic analysis that estimates the potential costs and benefits to various market participants. However, the scope of the SEC's proposed Regulation Crowdfunding is broader than the scope of FINRA's proposed rules. Regulation Crowdfunding, as proposed, prescribes rules governing the offer and sale of securities under the new crowdfunding provisions. It also provides a framework for the regulation of registered funding portals and brokers that issuers are required to use as intermediaries. In addition, it exempts securities sold pursuant to the crowdfunding exemption from registration requirements under the Securities Act. As a result, the SEC's economic analysis examines the impacts of securities-based crowdfunding in reliance on the crowdfunding exemption as a new fundraising channel. For example, it estimates the costs for registered brokers, and brokers that prospectively would register, to comply with the various requirements to engage in securities-based crowdfunding transactions. The SEC's economic analysis also estimates the costs for an intermediary to develop a platform to engage in such transactions.

In contrast, FINRA has written the proposed rules specifically for funding portals. In the absence of FINRA's Funding Portal Rules, securities-based crowdfunding in reliance on the crowdfunding exemption is still possible under the SEC rules, though intermediaries intending to facilitate such transactions would need to register as brokers.

2. Benefits

FINRA's proposed Funding Portal Rules will make it possible for intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption to register as funding portals, which is a lower cost alternative to registering as brokers. The proposed rules encourage funding portals to become members of FINRA as they provide a streamlined set of regulations that are tailored to the activities of funding portals and avoid the imposition of burdens and costs not associated with permissible funding portal activity. The proposed rules will likely increase the number of registered crowdfunding intermediaries, promote competition, and in turn potentially reduce costs to issuers and investors.

Because funding portals will be required to comply with both the SEC's and FINRA's rules if adopted, FINRA's Funding Portal Rules will create additional regulatory oversight of registered funding portals and improve the SEC's ability to effectively regulate registered funding portals' activities. FINRA believes that the proposed rules will reduce the risk of misconduct and fraud and help create a healthy marketplace in which issuers are more comfortable using securities-based crowdfunding to raise capital and investors are more willing to participate.

3. Costs to Funding Portals

FINRA recognizes that there will be costs to prospective funding portal members associated with each major set of provisions below. Because the proposed Funding Portal Rules have been streamlined to reflect the limited scope of activity permitted to funding portals, the compliance costs would be higher in the absence of the proposed rules where crowdfunding intermediaries would have to register as broker-dealers.

a. Registration and Other Costs

Certain costs to prospective funding portals are estimated in the economic impact analysis of FINRA's proposed rule change to adopt Section 15 of Schedule A to the FINRA By-Laws governing fees for funding portal members.[75]

b. Other Compliance Costs: Major Sets of Provisions

Funding Portal Conduct

Under proposed Funding Portal Rule 200, prospective funding portal members would need to develop and implement policies and processes designed to meet high standards of commercial honor and principles of trade, prevent use of manipulative, deceptive or other fraudulent devices, and comply with the specified proposed requirements on communications with the public.

[74] *See* note 8 *supra.*

[75] *See* note 12 *supra.*

Funding Portal Compliance

Proposed Funding Portal Rule 300(a) requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules.

Proposed Funding Portal Rule 300(b) requires that each funding portal member must designate to FINRA an executive representative.

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events. Funding portal members would need to establish policies and processes to detect the events that are required to be reported and ensure prompt reporting of the events.

Proposed Funding Portal Rule 300(d) is designed to require funding portal members to report to FINRA all contact information required by FINRA through such means as FINRA may specify.

Proposed Funding Portal Rule 300(e) requires each funding portal member to report to FINRA the member's gross revenue on Form FP-Statement of Revenue.

Proposed Funding Portal Rule 300(f) requires each funding portal member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires a funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place.

The proposal would not require funding portals to implement an anti-money laundering program at this time. Alternatively, broker-dealers that operate a platform under the proposed rules would continue to have anti-money laundering program obligations, and those obligations would extend to any platform that they operate. While this represents an additional cost to registered broker-dealers over new entrants that register strictly as funding portals, these costs are likely small because broker-dealers are already required to have in place all the requirements for an anti-money laundering program.

Investigations and Sanctions

Proposed Funding Portal Rule 800(a) provides that except for FINRA Rules 8110, 8211, 8213 and 8312, all funding portal members shall be subject to the FINRA Rule 8000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 800(b) addresses specified information that FINRA shall make available to the public. Proposed Funding Portal Rule 800(b)(2) provides that FINRA shall make available to the public information filed by a funding portal member indicating whether the funding portal member or any associated person of the funding portal member is subject to an event described in Section 3(a)(39) [76] of the Exchange Act, and that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Application of FINRA Rule 9000 Series to Funding Portals

Proposed Funding Portal Rule 900(a) provides that except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 900(b) sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules.

Arbitration and Mediation

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series, unless the context requires otherwise. Proposed Funding Portal Rule 1200(b) addresses predispute arbitration agreements for investor accounts.

c. Estimate of Costs

FINRA understands that the staffing and scope of the organization necessary to provide crowdfunding services may be comparable to that of a small broker-dealer. As such, FINRA looks to its experience with a sample of smaller broker-dealers to estimate the potential costs associated with the proposed rules. The sample firms do not appear to have a heavy investment in dedicated compliance infrastructure. For example, the designated contacts of these firms for FINRA tend to be a managing principal, who often serves several other roles such as executive representative, anti-money laundering representative, and continuing education representative. Required, routine compliance activities (such as annual certifications, email review, employee trading account reviews, etc.) are generally performed by these principals. In several instances, a firm will rely on a third-party compliance consulting firm to help with its general compliance functions. Several of the sample firms employ a model where their financial and operations principals are employed off-site, work part time or hold multiple registrations with different member firms. FINRA estimates that less than 50% of one internal person's time is typically spent on compliance activities at each of these firms. FINRA understands from a small sample of these firms that they currently pay $1,000 to $1,500 per month for compliance consulting services.

FINRA also understands that there are a few member firms that already offer private placement platforms for accredited investors. FINRA understands from various reports that these types of firms may have two full-time compliance officers and spend about $100,000 to $150,000 annually on ensuring that all regulations are followed. FINRA believes these estimates are likely for the full scope of broker-dealer activity and include the costs associated with compliance activities not covered by the rule proposal, and thus reflects compliance costs for activities beyond the scope of the permitted business activities of funding portals.

4. Costs to FINRA

FINRA has identified costs that it would likely incur as a result of the proposed rules. Specifically, FINRA needs to adapt its current regulatory infrastructure to manage regulatory processes for funding portals, including regulatory support to members and potential challenges to its decisions. To minimize these burdens, FINRA intends to use as much as possible of its in-place systems and processes.

[76] 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of ''statutory disqualification.''

5. Impact on Competition

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption are required to register with the SEC as brokers. As shown by the SEC's economic analysis in the Regulation Crowdfunding Proposal, the compliance cost associated with broker registration is expected to exceed the compliance cost associated with funding portal registration. By appropriately limiting the rule set and attendant compliance costs to match the permitted business activities of funding portals, FINRA's Funding Portal Rules will likely allow more registered intermediaries in the market and promote competition in the provision of crowdfunding services among funding portals and broker-dealers.

As noted above, funding portals may serve as a substitute for some private offerings currently offered through broker-dealers under other exemptions from registration, such as Regulation D (17 CFR 230.500 through 230.508). By enabling prospective funding portals to become members of FINRA and thereby engage in funding portal business, the proposed rules may provide a more efficient form of capital raising by issuers, resulting in a loss of underwriting business in these other private offering platforms. FINRA first notes that these private offerings serve only as a limited substitute for offerings pursuant to the crowdfunding exemption, as they have significant limitations on investor participation that make them inappropriate for many of the investments that could be made available under the crowdfunding exemption. Secondly, FINRA notes that any competitive impacts that might arise from substitution across platforms is mitigated by the ability of any broker-dealer to offer a crowdfunding platform or register a funding portal affiliate, and thus compete to retain the business.

Increasing competition among financial intermediaries who might assist startups and small businesses in obtaining capital will likely lead to lower costs for some issuers, which may enable more startups and small businesses to rely on securities-based crowdfunding as a new source of capital. An increased number of issuers in the fundraising market may promote competition and efficient allocation of capital among crowdfunding issuers.

Increased competition among crowdfunding intermediaries and issuers should also lead to more investment opportunities and lower costs for investors. More investors and thus more capital may be made available to startups and small businesses, helping to achieve the regulatory objective of the crowdfunding provisions of the JOBS Act.

6. Alternatives

As discussed above, FINRA understands that under the SEC's proposed rules, securities-based crowdfunding pursuant to the crowdfunding exemption can occur in brokers that are members of a self-regulatory organization. As such, FINRA considered applying its full rule set to intermediaries providing crowdfunding services. FINRA determined that this approach would impose costs not associated with the activities of the intermediaries and would likely have negative consequences for market efficiency and competition. FINRA also considered the alternative of requiring persons associated with funding portal members to register with FINRA and decided it would not be necessary at this early stage in light of the limited activities of funding portals. As FINRA gains experience in regulating funding portal member activities, FINRA will reassess the alternative based on the nature and scope of the business activities of funding portals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 13–34 (October 2013) (the ''Notice''). Seven comments were received in response to the *Notice.* A copy of the *Notice* is attached as Exhibit 2a. A list of commenters [77] is attached as Exhibit 2b. Copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c.

Some commenters expressed concerns that the rules as proposed in the *Notice* would impose too many requirements and, in combination with the requirements set forth in the SEC's Regulation Crowdfunding Proposal, would be costly and burdensome for prospective funding portals.[78] In contrast, other commenters expressed concern that the proposal should impose more requirements such as those that apply to current broker-dealer members or should include other requirements or specified guidelines for purposes of oversight of funding portal activities.[79] Commenters' specific suggestions are discussed below.

1. Fidelity Bond

As discussed earlier, the proposal as published in the *Notice* would have required that funding portal members maintain fidelity bond coverage. Two commenters suggested that FINRA should eliminate or tailor the proposed rule.[80] One of the commenters suggested that, because the JOBS Act prohibits funding portals from holding, managing, possessing or otherwise handling investor funds or securities, funding portals pose limited risk in this area and the fidelity bond requirement would impose an unnecessary cost on funding portals.[81] One of the commenters suggested that, to help save on premiums for prospective funding portals, fidelity bond coverage should not be required until a funding portal member's membership application is approved.[82] On the other hand, two commenters suggested greater stringency in this area.[83] One commenter suggested that the proposed fidelity bond requirement would not be sufficient for purposes of oversight and that the proposed requirement should include financial responsibility requirements.[84] One commenter suggested that the proposal should be revised to include fines for failure to maintain adequate fidelity bonds.[85]

In response, as discussed earlier, FINRA is not proposing the fidelity bond requirement as part of this rulemaking. FINRA believes that this approach is appropriate in the interest of reducing potential burdens on prospective funding portal members given the limited nature of funding portal business and given that regulatory experience with funding portals is developing.[86]

[77] All references to commenters are to the commenters as listed in Exhibit 2b.

[78] CyberIssues, Heritage and Polanco.

[79] FSA Institute, FSI, NASAA and Wulff.

[80] CyberIssues and Heritage.

[81] Heritage.

[82] CyberIssues.

[83] NASAA and Wulff.

[84] Wulff.

[85] NASAA.

[86] Similarly, given the limited nature of funding portal business, in particular the prohibition against funding portals holding, managing, possessing or otherwise handling investor funds or securities, and given that funding portal business is at an early stage of development, FINRA is not proposing net capital or similar financial responsibility requirements for funding portal members at this time. As discussed earlier, FINRA will monitor the development of this area and determine whether a subsequent rulemaking regarding fidelity bonds or other financial responsibility requirements is merited.

2. Anti-Money Laundering Program

As discussed earlier, the proposal as published in the *Notice* included a proposed requirement that funding portal members implement a written anti-money laundering program. Two commenters opposed the proposed requirement.[87] One suggested that the anti-money laundering rules are too complex and expensive to comply with, and that the rule is unnecessary because funding portals are prohibited from holding, managing, possessing or otherwise handling investor funds or securities and are thereby not in a position to facilitate money laundering.[88] One commenter suggested that imposing the requirement on funding portals would be duplicative of functions already performed for instance by institutions where investor funds would be held in escrow.[89] On the other hand, one commenter expressed support for the proposed requirement.[90]

In response, as discussed earlier, the BSA and the implementing regulations thereunder apply to brokers and dealers in securities that are registered or required to be registered with the Commission. The BSA does not apply to funding portals at this time. Accordingly, FINRA is not proposing an anti-money laundering requirement at this time.

3. Additional Specific Comments

a. Central Registration Depository

One commenter suggested that the proposal should expressly mandate that funding portal members file the SEC's Form Funding Portal and all related forms through the Central Registration Depository, similar to current FINRA Rule 1010(a).[91] In response, FINRA believes that it is sufficient, and consistent with the need for regulatory flexibility, that the proposal provides for submission of specified information by means and format prescribed by FINRA.[92] FINRA is in the process of developing systems for submission of specified information tailored to prospective funding portal members which, consistent with the Funding Portal Rules, FINRA will prescribe prior to the implementation of the proposal.

b. Associated Persons of a Funding Portal Member

One commenter suggested that FINRA should narrow the proposed definition of associated person of a funding portal member as set forth under proposed Funding Portal Rule 100(b).[93] The commenter suggested excluding from the definition employees of a funding portal whose functions exclusively relate to providing various services to issuers. In response, FINRA notes that the proposed definition is largely based on the current definition under the FINRA By-Laws that applies to broker-dealers and is meant to ensure among other things that the specified persons are subject to FINRA rules. FINRA notes that services that funding portals provide to issuers will potentially be an important component of the business model of many funding portals. Accordingly, FINRA does not propose to modify the definition.

Two commenters suggested that FINRA should institute examination and licensing requirements for at least some associated persons of funding portal members.[94] In response, FINRA notes that the funding portal business is at an early stage of development. Further, as discussed earlier, FINRA notes that the scope of activities permitted to funding portals is limited under the JOBS Act. Accordingly, FINRA is not imposing examination and licensing requirements on associated persons of funding portals at this time. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.

c. Application of Additional Rules

Two commenters suggested that FINRA should apply to funding portal members additional rules from the FINRA rulebook that currently apply to broker-dealer members or that FINRA should duplicate, within the proposed Funding Portal Rules, standards adopted by the SEC in Regulation Crowdfunding.[95] One commenter proffered several current FINRA rules governing broker-dealer members that the commenter suggested should be replicated within the proposed Funding Portal Rules to address potential conflicts of interest, such as the prohibition against guarantees and sharing in accounts under FINRA Rule 2150, as well as elements under FINRA Rule 2210 (Communications with the Public), FINRA Rule 3220 (Influencing or Rewarding Employees of Others), FINRA Rule 3240 (Borrowing From or Lending to Customers), FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security), and FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements).[96] The commenter further suggested that FINRA should adopt a distinct recordkeeping rule for funding portal members over and above the recordkeeping rule for funding portals adopted by the SEC.[97] One commenter suggested that the proposed Funding Portal Rules should duplicate rule language in the SEC's Regulation Crowdfunding aimed at limiting, in conformity with requirements of Title III of the JOBS Act,[98] the activities of funding portals, such as prohibiting funding portals from offering investment advice or recommendations.

In response, FINRA has stated in the *Notice* and in this filing its intent to streamline the proposed rules to the extent possible to reflect the limited scope of activity permitted by funding portals while also maintaining investor protection. Further, FINRA will enforce any rules for funding portals adopted by the SEC. As such, FINRA has indicated that its rules should not duplicate any rules adopted by the SEC in this area.[99] Title III of the JOBS Act sets specified limits on the activities of funding portals, for example, by expressly prohibiting funding portals from offering investment advice or recommendations and by prohibiting funding portals from holding, managing, possessing or otherwise handling investor funds or securities, which the SEC proposed to implement by rule.[100] The SEC has proposed to address such investor protection issues as measures to reduce the risk of fraud,[101] account opening,[102] requirements with respect to investor transactions,[103] payments to third parties,[104] and permissible communication channels.[105] All funding portal members of FINRA will be subject to these rules if they are

[87] CyberIssues and Heritage.

[88] Heritage.

[89] CyberIssues.

[90] CFA Institute.

[91] NASAA.

[92] *See, e.g.,* proposed Funding Portal Rule 110(a)(3)(A), regarding submission of Form FP–NMA, and proposed Funding Portal Rule 110(a)(4)(B), regarding submission of Form FP–CMA.

[93] CyberIssues.

[94] NASAA and Wulff.

[95] CFA Institute and NASAA.

[96] NASAA.

[97] *See* proposed Regulation Crowdfunding Rule 404.

[98] *See* note 6 *supra.*

[99] *See Regulatory Notice* 12–34 (July 2012).

[100] *See* proposed Regulation Crowdfunding Rule 300(c)(2).

[101] *See* proposed Regulation Crowdfunding Rule 301.

[102] *See* proposed Regulation Crowdfunding Rule 302.

[103] *See* proposed Regulation Crowdfunding Rule 303.

[104] *See* proposed Regulation Crowdfunding Rule 305.

[105] *See* proposed Regulation Crowdfunding Rule 402.

adopted by the SEC. Further, as discussed earlier, FINRA is proposing specified conduct and compliance rules, also aimed at investor protection.[106] FINRA does not believe that it serves a regulatory purpose to reduplicate in the Funding Portal Rules standards that the SEC has proposed to address in its rulemaking, or to otherwise duplicate in multiple iterations prohibitions against specified activities already set forth under applicable statutes, proposed SEC rules or the proposed FINRA Funding Portal Rules. As such, FINRA is not proposing at this time the additional suggested rules and standards. However, FINRA may propose additional requirements at a later time should FINRA determine that such requirements, based on the development of funding portal business under the FINRA Funding Portal Rules, and any other applicable rules, are merited.

d. Miscellaneous

One commenter proffered suggestions to amend FINRA's arbitration procedures.[107] While the comment is outside the scope of the proposed rule change, FINRA notes that proposed Funding Portal Rule 1200 addresses arbitration issues for the purpose of ensuring that funding portal members shall be subject to the existing FINRA rules in this area, unless the context requires otherwise, and for streamlining the existing predispute arbitration rule (FINRA Rule 2268) as appropriate for funding portals.

One commenter suggested that FINRA should provide guidance regarding the scope of liability for firms and advisors when clients make inquiries regarding investments in crowdfunding offerings.[108] The commenter suggested the SEC and FINRA should provide waiver of liability language for advisors and an educational Web site on crowdfunding, and that FINRA should undertake a retrospective review of the Funding Portal Rules. In response, FINRA welcomes retrospective review of rules and has committed to such review.[109] Further, FINRA notes that it makes substantial commitments to investor education and has a robust and vigorous investor education program. FINRA welcomes further dialogue on these issues as funding portal business develops under any rules implemented by the SEC and the FINRA Funding Portal Rules. FINRA does not propose at this time to provide waiver of liability language as outside the scope of the proposed rule change.

One commenter requested that FINRA provide a template for supervisory systems for funding portal members to follow.[110] In response, FINRA notes that under the proposed rules, it is the responsibility of a funding portal member to establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. Funding portal members will be expected to be mindful of their supervisory obligations under the FINRA Funding Portal Rules and other applicable rules to establish and maintain a supervisory system accordingly.

One commenter suggested that Form FP–NMA should not require FP Applicants to submit copies of contracts or agreements relating to business activities of the FP Applicant.[111] FINRA disagrees, as such information is directly relevant to assessing an FP Applicant for purposes of FINRA membership. Further, FINRA notes that the MAP as set forth under proposed Funding Portal Rule 110 already reflects extensive streamlining so as to tailor requirements to the permitted business of funding portal members. Accordingly, FINRA does not propose to make the suggested change. The same commenter sought clarification as to whether, under proposed Funding Portal Rule 1200(b), funding portal members are required to use predispute arbitration agreements with investors. FINRA notes that neither proposed Funding Portal Rule 1200(b), nor the FINRA rule upon which it is based (FINRA Rule 2268), impose such requirements.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2015–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2015–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–040 and

[106] *See, e.g.,* proposed Funding Portal Rule 200 and Rule 300 in Exhibit 5.

[107] NASAA.

[108] FSI Institute.

[109] *See, e.g., Regulatory Notice* 14–14 (April 2014) (seeking comment in connection with retrospective review of the Communications with the Public rules); *Regulatory Notice* 14–15 (April 2014) (seeking comment in connection with retrospective review of the gifts and gratuities and non-cash compensation rules); and *Regulatory Notice* 15–10 (March 2015) (seeking comment in connection with retrospective review of FINRA's membership application rules).

[110] CyberIssues.

[111] CyberIssues.

should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[112]

Brent J. Fields,

Secretary.

[FR Doc. 2015–27370 Filed 10–27–15; 8:45 am]

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[112] 17 CFR 200.30–3(a)(12).

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 986

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order No. 986; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 986

[Docket No. AO–FV–15–0139; AMS–FV–15–0023; FV15–986–1]

Pecans Grown in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas; Recommended Decision and Opportunity To File Written Exceptions To Proposed Marketing Agreement and Order No. 986

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This Recommended Decision proposes the issuance of a marketing agreement and order (order) under the Agricultural Marketing Agreement Act of 1937 to cover pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. The proposed order would provide authority to collect industry data and to conduct research and promotion activities. In addition, the order would provide authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by the Department of Agriculture (USDA). The program would be financed by assessments on pecan handlers and would be locally administered, under USDA oversight, by a Council of seventeen growers and shellers (handlers) nominated by the industry and appointed by USDA. This rule also announces the Agricultural Marketing Service's intention to request approval by the Office of Management and Budget of new information collection requirements to implement this program.

DATES: Written exceptions must be filed by November 27, 2015. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by December 28, 2015.

ADDRESSES: Four copies of all written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Rulemaking Branch, Specialty Crops Program, Agricultural Marketing Service (AMS), USDA, Post Office Box 1035, Moab, UT 84532, telephone: (202) 557–4783, fax: (435) 259–1502; or Michelle P. Sharrow, Marketing Order and Agreement Division, Rulemaking Branch, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jeff Smutny, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 26, 2015, and published in the July 2, 2015, issue of the **Federal Register** (80 FR 38021).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this Recommended Decision with respect to the proposed marketing agreement and order regulating the handling of pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

This Recommended Decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The proposed marketing order is authorized under section 8(c) of the Act.

The proposed marketing agreement and order are based on the record of a public hearing held July 20 through July 21, 2015, in Las Cruces, New Mexico; July 23 through July 24, 2015, in Dallas, Texas; and, July 27 through July 29, 2015, in Tifton, Georgia.

The hearing was held to receive evidence on the proposed marketing order from growers, handlers, and other interested parties located throughout the proposed production area. Notice of this hearing was published in the **Federal Register** on July 2, 2015.

A request for public hearing on the proposed program was submitted to USDA on May 22, 2015, by the American Pecan Board (Board), a proponent group established in 2013 to represent the interests of growers and handlers throughout the proposed fifteen-state production area. A subsequent, modified draft of the proposed regulatory text was submitted on June 10, 2015.

Witnesses at the hearing explained that the provisions of this proposal aim to assist the industry in addressing a number of challenges, namely: a lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings. Witnesses believed that these factors combined have resulted in the under-performance of the pecan industry compared to other nut industries.

At the conclusion of the hearing, the Administrative Law Judge fixed August 31, 2015, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. That date was subsequently extended to September 9, 2015, at the request of USDA and the Board. One brief was filed on behalf of the Board in support of the proposed program and its provisions. The brief also recommended certain changes in the regulatory text of the proposed order as a result of the public hearing sessions held in Las Cruces, New Mexico, from July 20 through July 22, 2015; Dallas, Texas, from July 23 to July 24, 2015; and Tifton, Georgia, from July 27 through July 29, 2015. These changes are discussed as appropriate later in this document.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether the handling of pecans produced in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend

to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be;

5. What the specific terms and provisions of the order should be, including:

(a) The definitions of terms used therein which are necessary and incidental to attain the declared objectives and policy of the Act and order;

(b) The establishment, composition, maintenance, procedures, powers and duties of an administrative Council for pecans that would be the local administrative agency for assisting USDA in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to conduct research and promotion activities;

(e) The authority to recommend grade, quality and size regulation, as well as pack and container regulation, for pecans grown and handled in the proposed production area;

(f) The establishment of requirements for handler reporting and recordkeeping;

(g) The requirement for compliance with all provisions of the order and with any regulation issued under it;

(h) An exemption for handlers of non-commercial quantities of pecans;

(i) The requirement for periodic continuance referenda; and

(j) Additional terms and conditions as set forth in § 986.88 through § 986.93, and § 986.97 through § 986.99 that are common to marketing agreements only.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

Material Issue Number 1—Whether the Handling of Pecans Grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas is in the Current of Interstate or Foreign Commerce

The record indicates that the handling of pecans grown in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

Witnesses testifying at the hearing stated that the proposed production area covers all known commercial production of pecans. The proposed production area would include the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

Domestic Utilization

The record shows that domestic utilization of pecans has remained relatively constant at an average of 136 million shelled pounds per year, or just below one half pound per person, over the past 10 years.

While the record indicates that U.S. utilization of pecans is predominant in the states where they are produced, pecans are shipped throughout the country. Witnesses stated that domestic prices of pecans are impacted by supply and demand within the pecan industry and that demand for pecans in one part of the U.S. influences the pecan market price throughout the market.

Witnesses explained that shipments of pecans between handlers within the production area are common. For example, pecans produced in the eastern part of the production area may be bought by a sheller who operates in the central or western parts of the production area. These pecans may be shelled to create whole meats or pieces, which may then be sold to pecan ingredient users in yet another part of the production area or outside thereof.

One witness gave the example of pecan pieces used by the confectionary industry. If demand increased for pecan pieces for candy makers located outside of the production area, the price for pieces to satisfy that demand will rise throughout the pecan industry, regardless of where the pecans are sourced from within the production area.

According to the record, because of the movement of pecans both within and outside of the production area, the pricing between regions is often correlated or interdependent.

Exports and Imports

The record states that the U.S. is the world leader in both production and export of pecans. The record also shows that export markets are increasingly important to pecan growers and handlers, with exports averaging 27 percent of total U.S. supply between 2009 and 2013 compared to averaging 12 percent of total supply between 1991 and 1995 (shelled basis).

The U.S. primarily exports to China with an annual average of 23.7 million inshell pounds per year between 2009 and 2013. The other main importers of U.S. inshell pecans are Vietnam and Mexico with 5.87 million pounds and 7.47 million pounds, respectively, during the same time period. China, Vietnam and Mexico together comprise roughly 95 percent of the total U.S. inshell pecan exports.

Main importers of U.S. shelled pecans are Canada, the Netherlands, the United Kingdom, Israel and Mexico, who have imported in aggregate 57.7 million inshell pounds on average over the same 2009 to 2013 time period.

While the U.S. is generally a net exporter of pecans, the trade balance in pecans is negative with Mexico. United States imports of pecans are sourced almost exclusively from Mexico (over 99 percent of the total imports), with an average of 50 million pounds per year in the period between 2010 and 2014. During this period, roughly half of the imports were inshell pecans with the balance being shelled.

Witnesses explained that demand for pecan exports directly impacts pecan prices in the domestic market. Chinese markets typically demand larger, inshell pecans, which are given as gifts during the Chinese New Year celebration or otherwise symbolize health and longevity. The increase in Chinese demand for pecans has resulted in a correlated increase in prices for larger, inshell pecans paid to U.S. pecan producers.

Moreover, the increasing export demand for pecans in general has impacted U.S. grower prices as more of total supply is directed out of the domestic market. Witnesses representing pecan sheller interests at the hearing explained that tighter supply of pecans in the domestic market can cause pecan prices to increase. However, these witnesses also explained that, due to a general lack of accurate production and cold storage data, price instability can be attributed to both increased export demand and the industry's inability to identify total supply. The lack of accurate industry data is further explored in Material Issue 2.

Evidence presented at the hearing confirmed that any handling of pecans in market channels, including intrastate shipments, exerts an influence on all other handling of such pecans. Several witnesses stated that a high price of pecans in the export market results in a higher price for pecans in the domestic market. Similarly, the market price for pecans shipped to states outside the production area impact market prices in producing states. Given the amount of shipments between handlers within the production area (for example, the movement of inshell pecans to shellers

between regions or from shellers to pecan ingredient users), the pricing between regions also has a market impact. Thus, it is concluded that the handling of pecans grown in the proposed production area is in the current of interstate and foreign commerce and directly affects such commerce.

Material Issue Number 2—The Need for a Pecan Marketing Order

The record evidence demonstrates that there is a need for a marketing order for pecans grown and handled in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

A summary of the challenges addressed by witnesses testifying in favor of the proposed program includes: A lack of organized representation of industry-wide interests in a single organization; a lack of accurate data to assist the industry in its analysis of production, demand and prices; a lack of coordinated domestic promotion or research; and a forecasted increase in production as a result of new plantings.

Proponents of the proposed program believe that these above-mentioned factors have resulted in the under-performance of the pecan industry compared to other nut industries. They further believe that the proposed program would increase demand, stabilize grower prices, create sustainable margins, and provide a consistent supply of quality pecans for consumers.

According to the record, the proposed order would provide authority to collect industry data and to conduct research and promotion activities. In addition, the order would provide authority for the industry to recommend grade, quality and size regulation, as well as pack and container regulation, subject to approval by USDA.

Need for Industry Organization

According to the record, there is currently no single organization that represents both pecan grower and handler interests industry-wide. There are two state pecan commissions (Georgia and Texas), ten state producer organizations, one national growers' association, and one national shellers' association. Witnesses from many of the state grower organizations explained that their activities primarily relate to grower education outreach within their respective areas. Witnesses from the two state commissions explained that assessments collected under those programs were used to support generic funding for pecans produced in the respective states, as well as to fund some research.

Witnesses from the national growers' association explained that the organization's primary focus is to promote U.S. pecan sales to foreign markets through USDA's Foreign Agricultural Service's Market Access Program. However, that organization also provides some support services to growers, such as information on Federal crop insurance and other government assistance programs. Lastly, the national growers' association also represents grower interests to government policymakers.

Witnesses from the national shellers' association described their organization's role as educating culinary and health professionals, food technologists and the general public about the nutritional benefits and uses of pecans. Additionally, the organization represents sheller interests in the handling and preparing of product for pecan ingredient users, improving handling and food safety technologies, and working with food product developers to identify new uses for pecans. Lastly, the national shellers' association also represents sheller interests to government policymakers.

Witnesses from the above-described organizations all stated that the proposed program would not duplicate or adversely affect their efforts and that an organization representing the industry as a whole would complement their efforts. These proponents explained that the proposed program would unify and represent industry interests through a coordinated selection of industry representatives to act and manage program activities on the industry's behalf. Moreover, these witnesses explained that the program's activities should include the hiring of a full-time professional staff to: Develop a comprehensive, professional marketing strategy; collect, assemble, and inform the industry with predictable supply numbers as a result of accurate data; and manage research and development projects focusing on disease and pest resistance, product development, and nutritional benefits of pecans.

Need for Data

According to the record, the only regularly published data on pecan production, supply, demand and market price is compiled by USDA's National Agricultural Statistical Service. Some additional data is compiled by USDA's Economic Research Service and the Foreign Agricultural Service. However, while helpful in a general analysis of the pecan industry as a whole, many witnesses explained that the USDA information is not readily available when market decisions need to be made. Moreover, USDA data is not offered at a level of detail that is sometimes needed when making sales decisions.

The U.S. pecan industry does not regularly compile its own data, and most data is reported on a voluntary basis. As a result, accurate market information is difficult for growers and handlers to obtain. Lack of timely information hampers both grower and handler decisions regarding pricing and available supply.

According to the record, under the proposed program handlers would be required to file reports on volume handled, carryover inventories, and other data deemed to be important to the proposed Council's ability to analyze the pecan industry and market. The proposed Council would also be required to make crop reports to the USDA at least yearly. These reports would provide all parties with more reliable product data. Increased confidence in the data on pecans would benefit growers, handlers and consumers, leading to more accurate product pricing and better information regarding product supply and demand.

Acreage of improved pecans throughout the proposed production area increased by 5 percent from just over 266,000 bearing acres in 2007 to approximately 279,300 bearing acres in 2012. During the same time period, the number of non-bearing acres of improved pecans (*i.e.,* acres less than 7 years old, not yet in full production) increased by 10 percent from 42,600 to approximately 46,860. Witnesses reported that new improved pecan plantings are being added each year, with significant production increases expected in the coming ten years. One witness estimated that the western region had added 15,000 to 20,000 acres of improved pecans in the previous five years. The number of native and seedling acres has declined, but the upcoming significant increase in improved pecan production is expected to have a major impact on future market conditions.

Witnesses stated that the additional production could potentially have a negative impact on price and be a challenge for the pecan industry in the coming years if no unified marketing efforts are made. They stated that future stability of market returns will likely be reliant on continually increasing consumer demand for pecans.

Witnesses further stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is essential to the

continued economic well-being of the pecan industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide a regulatory structure to monitor and ensure that minimum quality standards are not compromised as pecan production increases.

Need for Promotion

The record shows that generic promotion over a wide variety of agricultural products stimulates product demand and translates into higher prices for growers than would have been the case without promotion. Witnesses stated that the expected significant increase in production is one of the primary reasons for implementing a full-scale marketing program, with an emphasis on national generic promotion.

Promotional impact studies of other tree nuts (almonds and walnuts) and of Texas pecans showed that 0 to 3 percent was a representative range of price increases from promotion. Since the other tree nut promotion programs are well-established, the record shows that a middle (most likely) scenario would be a price increase from promotion of 1.5 percent for the early years of a new pecan promotion program. Based on a simulation of historical prices, and applying the 1.5 percent price impact, the projected increases in grower prices from promotion for improved and native/seedling pecans were 6.3 and 3.6 cents per pound, respectively, with a combined average of 5.7 cents. The weighted average was computed using a representative farm allocation of improved versus native/seedling pecans of 78 and 22 percent, respectively.

The record shows that the proposed initial range of assessments per pound is 2 to 3 cents for improved pecans and 1 to 2 cents for native pecans. The midpoints of these ranges (2.5 and 1.5 cents, respectively) are used to compute a cost-benefit ratio from promotion, with a weighted average of 2.3 cents.

Dividing the projected benefit of 5.7 cents per pound by the expected cost of 2.3 cents yields a cost-benefit ratio of approximately 2.5. For each dollar spent on pecan promotion through a Federal marketing order, the U.S. average grower price per pound is expected to increase by $2.50.

Need for Research

Research activities are currently conducted as funding is available by the independent organizations mentioned above with little coordination among projects. Witnesses cited a number of topics for research that would greatly benefit the pecan industry. One key issue was the need for more research on the nutritional and health benefits, such as impacts on cardiovascular disease and cancer. Pecan industry worker safety standards, including protection against dust particles, were also mentioned as topics for research that could be funded by the marketing order. Research topics cited by witnesses also included additional uses for pecans as ingredients, developing new pecan-containing products, understanding consumer trends, and determining the most effective methods to market pecan products. Additional topics cited included crop-related research on tree yields and preventing the spread of the pecan weevil.

Need for Handling Regulation

The relationship among product quality, consumer demand, and grower returns in the pecan industry was explained at the hearing.

Proponents of the proposed order assert that poor quality pecans impact demand and the potential growth of demand for pecans. Characteristics routinely deemed as ''poor quality'' by witnesses testifying at the hearing include dark coloration and rancidity. Witnesses stated that the authority to implement grade and quality regulation under the proposed order would lead to a higher level of consistent, quality product in the market, increased consumer demand, and stabilized grower returns.

Witnesses stated that when poor quality pecans reach certain consumers, they may cease buying pecan products. The way to minimize that outcome is to develop industry-wide minimum standards relating to size, color, rancidity and other characteristics. Improved quality standards and standardization of packaging can lead to higher quality products, with greater consistency, reaching store shelves and industrial (ingredient) users. The resulting increase in consumer confidence is the key to increasing demand as well as increasing and stabilizing grower returns, according to the record.

Stabilizing Grower Prices

Costs of Production

According to the record, farming pecans is a costly investment with a significant delay in benefits and, when mature trees are in production, an unreliable crop yield. To remain economically viable, growers must maintain a level of return per pound harvested that covers their cost of production.

Record evidence indicates that production costs can be divided into three categories: the orchard establishment costs, cultural costs, and administrative costs.

Establishment costs, or the overall cost to develop and maintain an acre of pecans until revenue exceeds growing expenses, are estimated at between $1,938 and $2,560 per acre per year, not including equipment or land costs, with an average tree maturation period of 7 years. The range of establishment costs reflects the differing needs and input costs in the different regions (See Table 1). Establishment costs include the purchase of trees, installation of irrigation systems, and input costs (labor, pest and disease control, etc.) prior to the trees being mature enough to yield a full crop.

Annual per acre cultural costs average between $1,479 and $2,478 per acre per year once the trees are productive. Again, the range in cost reflects differences in regional production environments. Cultural costs include water, labor, fertilizer, pest and disease control, and harvesting expenses incurred on an annual, per acre basis once the orchard has been established and is producing a commercial crop.

For the purpose of this Recommended Decision, administrative costs include equipment financing and insurance. Information gathered from witnesses indicates administrative costs are roughly $20,464 per year for a farm of 30 acres. Not included in this cost estimate is management labor or other related business expenses. Witnesses explained that this estimate would be applicable to orchards having between 30 and 80 acres operating as commercial producer businesses. Orchards of larger acreage would require greater investments in equipment and therefore have greater annual administrative costs.

Witnesses speaking to the varying production costs offered the following figures divided generally between the Carolinas to east Texas and west Texas to California.

TABLE 1—COSTS OF PRODUCTION

Orchard Establishment (not including land)			
Carolinas to East-Texas		West-Texas to California	
Well & Pump	$7,800–$34,000+.*	Well & Pump	$7,800–$34,000+.*
Drip Irrigation	$800/acre.	Irrigation	$75/acre.
Equipment	$513,000.*	Equipment	$513,000.*
Trees	$580/acre.	Trees	$580/acre.
Fertilizer, Pest, Disease, Weed Control.	$287/acre.	Fertilizer, Pest, Disease, Weed Control.	$605–$1055/acre.
Labor, Fuel, Repairs	$271/acre.	Labor, Fuel, Repairs	$336.58/acre.
Sample Total	$1,938/acre + $520,800–>$547,000 Equipment & Well.*	Sample Total	$2,110–$2,560/acre + $520,800–>$547,000 Equipment & Well.*
Cultural Costs (annual/acre)			
Fertilizer, Pest, Disease, Weed Control.	$555–$650/acre.	Fertilizer, Pest, Disease, Weed Control.	$605–$1,055/acre.
		Water	$325–375/acre.
Labor, Fuel, Repairs, Maint	$430/acre.	Labor, Fuel, Repairs	$337.
Hedging	$40–50.	Hedging	$140.
Harvest	$454.	Harvest	$580.
Sample Total	$1,479–$1,584.	Sample Total	$1,987–$2,487.
Administrative Costs ** (annual)			
Equip Interest	$17,955.	Equip Interest	$17,955.
Equip Insurance	$2,507.	Equip Insurance	$2,507.
Sample Total	$20,464.	Sample Total	$20,464.

* Not including interest.
** Not including management pay.

In order to recover these investment costs and annual expenditures, growers need to sell their crop at a price that covers production cost. To understand the extent to which growers have positive revenue, or conversely, are losing money on their pecan operations, Table 2 presents grower prices that can be used to compare grower revenue to grower costs. The table shows the six most recent years of U.S. season average grower price data, which covers both improved and native/seedling pecans for all of the U.S. from 2009 to 2014. The third row is a computation of weighted average price, combining both categories of pecan varieties. As mentioned in the previous section on the *Need for Promotion,* the weighted averages were computed using a representative farm allocation of improved versus native/seedling pecans of 78 and 22 percent, respectively.

TABLE 2—U.S. SEASON AVERAGE GROWER PRICES (2009–2014) AND COMPUTED WEIGHTED PRICES

	2009	2010	2011	2012	2013	2014
Improved *	$1.53	$2.49	$2.59	$1.73	$1.90	$2.12
Native/seedling *	0.93	1.58	1.61	0.88	0.92	0.88
Weighted average of improved and native/seedling prices **	1.40	2.29	2.38	1.54	1.68	1.85

* Price data NASS/USDA.
** Indicates the computed price using weights for improved and native/seedling pecans of 78% and 22%, respectively, which is the acreage allocation of a representative U.S. pecan farm, according to the record.

The weighted average prices also appear in Table 3 below. The purpose of the table is to compare grower revenues and grower costs using alternative scenarios of yields per acre. Witnesses reported that an average yield that represents all states, and both improved and native/seedling varieties, is 1,666.67 pounds per acre. That yield level appears in Table 3 as the middle (most likely) scenario figure of 1,667 pounds. The two alternative scenario yields (1,300 and 2,000 pounds) are approximately 20 percent above and below, respectively, the most likely scenario.

Gross revenue per acre in Table 3 is annual average price for each year multiplied by the three alternative yield levels.

In addition to the three yield levels, Table 3 also presents three alternative levels of grower costs. Analyses of variable costs per acre entered into the record ranged from approximately $1,500 to $2,500, so these levels were used as the low and high variable cost scenarios; the midpoint of that range is included as the middle scenario.

A fixed cost per acre estimate of $600 was also entered into the record. Adding $600 to the three alternative variable costs yields three total cost per acre scenarios: $2,100, $2,600 and $3,100.

With three levels each of yield and total cost of production, Table 3 shows

nine rows of net revenue estimates (gross revenue minus total cost). Positive values mean that growers with pecan farms with the corresponding level of yield and total costs are making money. Negative net revenue per acre means that grower costs exceed grower revenue from the sale of pecans.

The scenarios in Table 3 demonstrate that many pecan growers have faced difficult financial circumstances in four of the last six years. In two years of high prices (2010 and 2011), there was positive net revenue per acre in nearly every scenario, except in the highest cost and lowest yield. During the other four years, however, there are a number of cells with negative net revenue figures. Looking at the most likely yield scenario (1,667 pounds) and the alternative cost levels for the year 2013 provides a useful look at potential farm financial conditions. The 2013 weighted average grower price of $1.68 is close to the average of the most recent three years: $1.69 for 2012 to 2014. With the $2,100 cost scenario, net revenue per acre for 2013 is $707. When the cost rises to $2,600 per acre in the middle scenario, net revenue falls to $207. With costs at $3,100, net revenue per acre turns negative (-$293). Since this example is a ''middle scenario,'' many growers are better off than illustrated by this example, but many are also in worse financial condition.

TABLE 3—GROSS AND NET REVENUE PER ACRE OF PECANS AT ALTERNATIVE U.S. AVERAGE YIELDS, BASED ON WEIGHTED U.S. ANNUAL AVERAGE GROWER PRICES (2009–2014)

	2009	2010	2011	2012	2013	2014
	Dollars per pound					
Price *	$1.40	$2.29	$2.38	$1.54	$1.68	$1.85
Yield ** lbs/acre	Grower Gross Revenue *** at Alternative Yields, $ per Acre					
1,300	1,818	2,977	3,088	2,006	2,190	2,403
1,667	2,331	3,816	3,958	2,571	2,807	3,080
2,000	2,798	4,580	4,750	3,086	3,369	3,696
	(Variable plus fixed costs: $1,500 + $600 = $2,100 Total Cost)					
	2,100	2,100	2,100	2,100	2,100	2,100
	Grower Net Revenue at Alternative Yields, $ per Acre					
1,300	−282	877	988	−94	90	303
1,667	231	1,716	1,858	471	707	980
2,000	698	2,480	2,650	986	1,269	1,596
	(Variable plus fixed costs: $2,000 + $600 = $2,600 Total Cost)					
	2,600	2,600	2,600	2,600	2,600	2,600
	Grower Net Revenue at Alternative Yields, $ per Acre					
1,300	−782	377	488	−594	−410	−197
1,667	−269	1,216	1,358	−29	207	480
2,000	198	1,980	2,150	486	769	1,096
	(Variable plus fixed costs: $2,500 + $600 = $3,100 Total Cost)					
	3,100	3,100	3,100	3,100	3,100	3,100
	Grower Net Revenue at Alternative Yields, $ per Acre					
1,300	−1,282	−123	−12	−1,094	−910	−697
1,667	−769	716	858	−529	−293	−20
2,000	−302	1,480	1,650	−14	269	596

* Weighted averages, combining season average grower prices for improved and native/seedling.

** Based on record evidence, 1,666.67 pounds is a representative estimate of average yield per acre across all states and regions, including improved and native/seedling pecans. The range of alternative yields is approximately 20 percent above and below, rounded to the nearest hundred.

*** Gross Revenue per acre is annual average price multiplied by alternative yields per acre without subtracting costs. Net Revenue is Gross Revenue minus Total Cost. A negative net revenue value means that grower cost exceeds grower revenue from the sale of pecans.

Witnesses pointed out that without an improved, full-scale national marketing program in the face of increased future production, prices would remain volatile, and there could be a number of future years where grower prices will be as low as those experienced in 2012 ($1.54) and in 2009 ($1.40), with corresponding negative net revenue for many growers.

Qualified Grower

''Grower'' should be defined to identify those persons who are eligible to vote for, and serve as, grower members and alternate members of the council and those who are eligible to vote in any referendum. The term should mean any person engaged within the production area in a proprietary capacity in the commercial production of pecans.

Witnesses stated that the minimum size of a commercial grower is 30 acres and a representative average yield across the entire production area is

1,666.67 pounds per acre. This combination of acreage and yield results in a minimum threshold level of commercial production of approximately 50,000 pounds. Witnesses stated that expenditures for the minimum level of inputs required for commercial pecan production cannot be justified for any operation smaller than this. Any smaller operation is considered a ''hobby farmer.''

Given the record evidence outlined above, the term ''grower'' should mean any person engaged within the production area in a proprietary capacity in the production of pecans. ''Proprietary capacity'' would include scenarios in which the grower owns an orchard and harvests its pecans for sale (even if a custom harvester is used) or in which the grower is a lessee of a pecan orchard and has the right to sell the harvest (even if the lessee must remit a percentage of the crop or rent to a lessor). The definition of ''grower'' should also stipulate that, for the purpose of eligibility to participate in grower referenda, in nomination votes, and to serve as Council members, qualified growers should produce a minimum of 50,000 pounds of inshell pecans during a representative period (average of four years) or own a minimum of 30 pecan acres. In measuring acres of native pecan trees, the USDA's Farm Service Agency definition should be used (see Material Issue 5(a)). The proposed Council should also have the authority to recommend changes to this definition subject to the approval of the Secretary. In all cases, the term ''grower'' is synonymous with the term ''producer.''

As a conforming change to the addition of a new § 986.10, Cracks, discussed below, the proposed section number for the definition of ''grower'' has changed from § 986.16 to § 986.17 and is incorporated into the proposed regulatory text of this Recommended Decision.

The record further supports that each business unit (such as a corporation or partnership) should be considered a single grower and should have a single vote in nomination proceedings and referenda. The term ''grower'' should include any person who owns or shares in the ownership of pecans. For example, a person who rents land and produces pecans resulting in that person's ownership of all or part of the pecans produced on that land would be considered a grower.

Also, any person who owns land, which that person does not farm but, as rental for such land, obtains ownership of a portion of the pecans produced thereon, should be regarded as a grower for that portion of the pecans received as rent. The tenant on such land should be regarded as a grower for the remaining portion produced on such land.

A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a pecan crop. In such venture, one party may be the farmer who contributes one or more factors, such as labor, time, production facilities or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. Any individual, partnership, family enterprise, organization, estate, or other business unit currently engaged in the production of pecans for market would be considered a grower under the proposed order and would be entitled to vote in referenda and council nominations. Each party would have to have title to at least part of the crop produced, electing its disposition, and receiving the proceeds there from. This control would come from owning and farming land producing pecans, payment for farming services performed, or a landlord's share of the crop for the use of the producing land. A landlord who only receives cash for the land would not be eligible to vote. A business unit would be able to cast only one vote regardless of the number and location of its orchards, but each legal entity would be entitled to one vote.

Evidence presented at the hearing supports a Federal marketing order for pecans grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. In view of the foregoing, and based on the record of the proceeding, it is concluded that current economic and marketing conditions justify a need for a marketing order for pecans. The order would meet many needs of the industry and would tend to effectuate the declared policy of the Act.

Material Issue Number 3—Definition of Pecan and Production Area

Definitions of the terms ''pecan'' and ''production area'' should be included in the order to delineate the commodity and the area that would be regulated under the provisions of the proposed program.

Pecans

According to the record, the term ''pecan'' should be defined to include any and all varieties or subvarieties of the tree Genus: *Carya,* Species: *Illinoensis,* also referred to as *Carya illinoinensis* (syn. *C. illinoenses*). The term ''varieties'' should mean and include all cultivars, classifications, or subdivisions of *Carya illinoinensis.* The record clarifies that trees classified as ''Hicans'' should not be included among the varieties of *Carya illinoinensis.* Instead, the term ''Hican'' refers to a tree resulting from a cross between a pecan and some other type of hickory (also members of the genus Carya) or the nut from such a hybrid tree and the product of that tree. Hican production would not be regulated under the proposed order. As a conforming change to the addition of a new § 986.10, Cracks, discussed below, the proposed section number for the definition of ''pecan'' has changed from § 986.28 to § 986.29 and is incorporated into the proposed regulatory text of this Recommended Decision.

The pecan (*Carya illinoinensis*) is a perennial tree native to North America and produced extensively throughout the southern region of the USA and the northern portion of Mexico. One witness reported that a pecan tree can produce for over 300 years.

Native and Improved Pecans

Record evidence explains that there are two broad categories of pecans: ''native or seedling'' and ''improved.'' Native pecans are pecan varieties that are harvested and sold from non-grafted or naturally propagated trees. Native groves are typically found along rivers and in alluvial bottomlands and are randomly spaced, depending upon soils and topography. Native pecans are grown primarily in the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Texas. According to the record, a native tree can take ten to twelve years to produce.

Improved pecans are pecan varieties bred or selected for superior traits of nut size, ease of shelling, production characteristics, and resistance to certain insects and diseases. Improved orchards are intentionally planted trees grafted to rootstock in rows with uniform tree spacing. The NASS definition of improved varieties is ''budded, grafted, or top-worked.'' According to the record, the first grafted trees were sold in the 1880s, followed by growth in the commercial planting of improved varieties in the early 1900s. There are hundreds of pecan varieties around the world which can be classified as native or improved varieties; however, most of the horticulture advances have taken place in commercial orchards producing improved varieties. According to the record, the most common varieties of

improved pecans currently in production include but are not limited to: Desirable, Elliot, Forkert, Sumner, Creek, Excel, Gloria Grande, Kiowa, Moreland, Sioux, Mahan, Mandan, Moneymaker, Morrill, Cunard, Zinner, Byrd, McMillan, Stuart, Pawnee, Eastern and Western Schley, Wichita, Success, Cape Fear, Choctaw, Cheyenne, Lakota, Kanza, Caddo, and Oconee.

Witnesses explained that two additional varieties, the Gracross and the Gratex, should also be included in the list of commonly produced varieties even though they were not included in the proposed language published in the Notice of Hearing. The Board recommended adding both Gracross and Gratex to the list of varieties included in the renumbered § 986.29(a)(2), the proposed classification of improved varieties under the definition of ''pecan.'' This modification has been incorporated into the proposed regulatory text of this Recommended Decision.

While the list of improved varieties proposed to be included into the proposed definition of pecan is non-exhaustive, proponents stated that the introduction of future improved varieties would take considerable time to breed and develop into commercial production. Witnesses did state, however, that the authority to add new varieties to the improved list would be important in order for the definition of pecan to remain current with industry practices.

Witnesses evaluated the production of pecans in the U.S. separately for native and improved varieties. Record evidence indicates that over the past 10 years, production from improved varieties has increased, while the production from the native varieties has remained stagnant. Production from improved varieties was, on average, 225 million pounds per year from 2005 to 2014, representing 81 percent of total production. Native pecan production in the same period was 52 million pounds, which represents 19 percent of total production.

According to USDA data, total U.S.-utilized production of inshell pecans increased 10 percent on average each year from 2005 to 2014. Production of improved varieties increased more than 12 percent, while production of natives increased 8 percent on average over the same ten-year time period.

From 2005 to 2014, prices for improved variety pecans fell four percent on average each year, while prices for native pecans remained relatively stagnant, increasing by less than one percent each year.

On average, U.S. crop value for native and improved varieties of pecans was nearly $464 million per year from 2005 to 2014. Of that total, 88 percent was improved with more than $409 million in crop value, and 12 percent was native with a crop value of almost $55 million. Growth in production of both native and improved varieties from 2005 to 2014 increased total crop value 9 percent on average each year.

Substandard Pecans

A third classification of ''pecan'' is included in proposed § 986.29: Substandard pecans. Witnesses explained that this classification is intended to capture pecans that are identified as being of an inferior quality yet, with further handling, would have market value. Witnesses described some of the inferior traits of substandard pecans to include those that are lightweight or underdeveloped or those whose outer shuck has adhered to the shell.

According to the record, pecans that are underdeveloped and yield smaller nut meats should be defined as ''blowouts.'' This term describes the process of running inshell pecans through forced-air tubes to separate fully developed nuts from underdeveloped nuts. Fully developed nuts are heavier than the underdeveloped nuts. Therefore, the culled underdeveloped nuts ''blow out'' of the air tubes in the process of separation. The term ''blowout'' is defined in proposed § 986.4.

Witnesses further explained that pecans that are presented to the handler with the outer shuck adhered to the shell are also considered inferior due to the additional work required to remove the outer layer. These nuts are commonly referred to as ''stick-tights'' and fetch a lower value than pecans that are free of their outer hull. The proposed definition of ''stick-tight'' as published in the Notice of Hearing was identified as § 986.37. However, as a conforming change to the addition of a new § 986.10, Cracks, described below, the proposed section number for the definition of ''stick-tight'' has changed from § 986.37 to § 986.38 and is incorporated into the proposed regulatory text of this Recommended Decision.

Section 986.9 of the Notice of Hearing included a definition for ''crack or cracks'' that read as follows: ''*Crack* means to break, crack, or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell. *Cracks* refer to an accumulated group or container of pecans that have been cracked in harvesting or handling.'' However, according to record evidence, the terms ''crack'' and ''cracks'' are not used interchangeably. The former is a verb that describes an action taken either accidentally during harvest or purposefully in the handling process. The latter term ''cracks'' refers to a group of pecans that have either been damaged during harvest or have intentionally had their shells opened in the handling process.

Witnesses further explained that cracks that occur naturally or during harvest are considered of lesser value as the outer shell has been compromised and may have resulted in exposure to dirt or insects. For this reason, ''cracks'' are also included in the list of substandard pecan attributes. However, these cracks are different from intentional ''cracks'' produced in a handling facility.

In order to clarify the difference between ''crack'' and ''cracks,'' the Board recommended separating the definition § 986.9 published in the Notice of Hearing into two definitions. This modification has been incorporated into the proposed regulatory text of this Recommended Decision at § 986.9.

Production Area

The term ''production area'' should be defined to mean the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas. The record shows that the production area defined in the proposed order is the major pecan producing area in the United States. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''production area'' has changed from § 986.30 to § 986.31 and is incorporated into the proposed regulatory text of this Recommended Decision.

Witnesses testifying at the hearing stated that 100 percent of the pecans produced in the United States are grown in the fifteen-state area. Witnesses explained that while pecan trees may be found growing outside of these fifteen states, commercial production from those trees would be highly unlikely. Climate factors would prohibit them from consistently yielding commercially viable crops. For example, pecan trees are found growing as far north as the state of Illinois, but the cooler temperatures in that state compared to the southern U.S. states prevent the trees' production cycle from producing nuts that are commercially viable. The nuts produced would be fewer in volume and yield a smaller meat,

thereby making commercial production less viable.

Regions

The record supports dividing the production area into three regions, where ''region'' would be defined to mean each geographic subdivision of the proposed production area described in the marketing order. The regional delineations would be important for the purposes of Council nominations of grower and sheller Council members who would represent the interests of their geographic peers.

According to the hearing record, the production area should be divided into three regions, each representing roughly one third of total domestic production. These regions are: The *Eastern Region,* consisting of Alabama, Florida, Georgia, North Carolina, South Carolina; the *Central Region,* consisting of Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas; and the *Western Region,* consisting of Arizona, California, New Mexico.

Witnesses testifying in support of the proposed regional boundaries and the authority of the Council to propose changes to those boundaries, if approved by the Secretary, noted that the proposed language published in the Notice of Hearing included a reference to ''district.'' As a clarifying change, the Board recommends replacing the word ''district'' with the word ''region'' in the first sentence of paragraph § 986.32(b) so that the terminology is consistent. In addition, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''region'' has changed from § 986.32 to § 986.33 and is incorporated into the proposed regulatory text of this Recommended Decision.

As the data given below indicates, overall production is concentrated in three states, one in each region: Georgia, New Mexico, and Texas, with 32 percent, 22 percent and 18 percent of the total U.S. production of pecans, respectively. A similar distribution of shares of production holds for improved variety pecans. Improved varieties are produced in all three regions.

As previously mentioned, total production is relatively evenly distributed across the three regions of the production area. The Eastern Region produces 36 percent of the nation's pecans, while the Central and Western Regions produce 32 and 31 percent, respectively. All three regions produce improved varieties of pecans, with 40 percent coming from the Eastern Region, 39 percent from the Western Region, and 21 percent from the Central Region. As already noted, three states—one from each region—produce the highest volume of improved pecans. They are Georgia, New Mexico, and Texas with 36 percent, 28 percent, and 17 percent, respectively, of the total improved variety production.

Native variety production only occurs in the Central and Eastern Regions, however. The Central Region produces 81 percent of total native variety volume in the U.S., while the East produces 19 percent. The states of Oklahoma, Texas, and Louisiana in the Central Region together make up 72 percent of total native production. In the Eastern Region, Georgia produces 14 percent of the U.S. native crop.

As stated earlier, improved varieties represent 88 percent of total crop value, and natives represent 12 percent. Crop value is divided fairly evenly among the three regions of the production area. The Eastern and Western Regions each represent 36 percent of total crop value, with the remaining 28 percent in the Central Region. Of improved variety crop value, the Western Region, Eastern Region, and Central Region represent 41, 38, and 21 percent, respectively. Together, Georgia, New Mexico, and Texas make up 81 percent of total crop value of improved varieties. Crop value of native varieties is concentrated in the Central Region, particularly in Texas, Oklahoma, and Louisiana with 26, 25, and 17 percent, respectively. Georgia, in the Eastern Region, represents 16 percent of native variety crop value as well.

According to the record, farm sizes also differ by region. Evidence entered into the record indicates that less than 30 percent of the reported farms in the proposed production area have less than 50 acres under production. In the Central and Western regions, almost half of the farms have between 50 and 499 acres under production, but less than 30 percent of the farms are this size in the East. The very large farms of 500 acres or more represent 23 percent, 28 percent and 44 percent of the acreage in the Central, Western, and Eastern regions, respectively, showing a higher concentration of large producers in the Eastern region.

Witnesses testifying to regional differences in farm operations across the proposed production area stated that generally, in the Eastern Region and the eastern part of the Central Region, trees are planted at a range of 20 to 40 per acre. This is less dense than the 30 to 50 trees per acre found in the western part of the Central Region and the Western Region.

Horticultural practices also differ from east to west. Generally, in the Eastern Region and eastern part of the Central Region, insect and fungicide management are required while irrigation water is supplemental. In the Western Region and western part of the Central Region, pest management is less of a factor. Instead of irrigation many Western orchards use ''flooding'' by diverting nearby rivers or streams.

The record shows that dividing the production area into the three above-described regions would provide for adequate grower representation on the Council.

Allocation of grower membership among the regions would be based, in large part, on the relative levels of acreage and production among the regions, as well as the number of growers in each of the regions. Furthermore, the regional allocation identifies three distinct areas having unique combinations of farm size and distribution, cultural practices, and production challenges. By allocating membership representation on the proposed Council by region, future grower and sheller members will be able to represent the individual concerns of their area and peers. Allocation of grower membership among the regions is discussed further under material issue 5(b).

Reapportionment and Redefining of Regions

Testimony indicated that authority should be provided to allow the Council to recommend to USDA the redefining of regional boundaries and reapportionment of grower and sheller membership among the regions. This would allow changes in grower and sheller representation on the Council to reflect any future shifts in pecan acreage and production within the production area.

For these reasons, witnesses testified in support of including the authority to reestablish regional boundaries as part of the proposed program. Any changes to the regions would require a recommendation of the Council, and approval by USDA through the rulemaking process. Authority for reallocation of grower and sheller membership among the regions is included in the proposal. This authority would allow the Council to recommend changes to regional representation in the number of members if production were no longer equally distributed among regions and regional boundaries were not changed. Both the authority for redefining of regions and reallocation were supported by witnesses explaining the need for the proposed order to have the flexibility to accommodate future changes in the industry.

Section 986.59 was entitled ''reapportionment and redistricting'' in the regulatory text of the Notice of Hearing. USDA recommends modifying the section heading for § 986.58 by removing the term ''redistricting'' and replacing it with ''redefining of regions.'' This modification reflects the usage of the term ''region'' throughout the proposed regulatory text, and the absence of the term ''district.'' This modification has been included in the proposed regulatory text of this Recommended Decision.

Smallest Practicable Area

The Act requires that marketing orders be limited in their application to the smallest regional production area found practicable. For the reasons given above, including the movement of pecans between growers and handlers of different regions and the interdependency of pecan prices among the states included in the proposed production area, it is concluded that the proposed production area meets the smallest practicable area requirement of the Act. A production area covering pecans grown in the states of Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas under the proposed order is consistent with carrying out the declared policy of the Act and, therefore, should be defined as hereinafter set forth.

Material Issue Number 4—Definition of Handler and Handle

The term ''handler'' should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person who handles pecans within the production area or places pecans in the current of commerce within the production area or in the current of commerce between the production area and any point outside thereof. A handler could be an individual, a joint venture, partnership, corporation, or other business entity.

This term is further defined in the proposed order as the person who would be responsible for paying assessments and submitting reports and other information required for the administration of the proposed program. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''handler'' has changed from § 986.18 to § 986.19 and is incorporated into the proposed regulatory text of this Recommended Decision.

The term ''handle'' should be defined in the order to establish the specific functions that would place pecans in the current of commerce within the production area, or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under the authority of the proposed marketing order.

According to the record, ''handle'' should be defined to mean: To receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export, or ship (except as a common or contract carrier of pecans owned by another person), or in any other way to put inshell or shelled pecans into any and all markets in the stream of commerce either within the area of production or from such area to any point outside thereof. Again, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''handle'' has changed from § 986.19 to § 986.20 and is incorporated into the proposed regulatory text of this Recommended Decision.

Witness testimony generally describes the handling process as beginning with the receipt of inshell pecans that have been harvested either by the grower or by a custom harvester on the grower's behalf. Receipt of pecans can be at a handler's facility or at an accumulator's collection point. ''Accumulator,'' defined as a person who compiles inshell pecans from other persons for the purpose of resale or transfer, often operates as a collection point for smaller volumes of pecans being delivered on an ad hoc basis. These deliveries can be from smaller producers, individuals with producing pecan trees in their yard, or from individuals that collect pecans from untended orchards. Accumulators typically accrue these smaller deliveries to compile into larger lots for sale to larger handlers, including shelling facilities and exporters. The term ''accumulator'' is defined in proposed § 986.1 of this order.

According to the record, commercial growers generally sell their product directly to handlers, including shellers. In this scenario, pecans can either be cleaned by the grower prior to delivery or cleaned by the handler after receipt. If a grower operation is large enough to cover the cost of operating cleaning equipment, the harvest will be cleared of debris and substandard pecans to determine volumes of improved and native pecans prior to transfer to a handler for sale. The sale of pre-cleaned pecans is referred to as ''grower-cleaned production'' in the proposed order. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''grower-cleaned production'' has changed from § 986.17 to § 986.18 and is incorporated into the proposed regulatory text of this Recommended Decision.

Alternatively, ''handler-cleaned production'' is production that is received, purchased or consigned from a grower by a handler prior to processing through a cleaning plant. Once received by the handler, the pecans are processed through a cleaning plant so as to determine volumes of improved pecans, native and seedling pecans, and substandard pecans. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''handler-cleaned production'' has changed from § 986.21 to § 986.22 and is incorporated into the proposed regulatory text of this Recommended Decision.

According to the record, shelling is an important handling activity as it provides the consumer and the ingredient industry with a readily-useable pecan product. As such, the term ''sheller'' should be defined as a person or business that converts inshell pecans to shelled pecans for the purpose of placing shelled pecans, or ''pecan meats,'' into the stream of commerce.

As discussed in Material Issue 5b, ''sheller'' should also be defined as those persons who are eligible to vote for, and serve as, sheller members and alternate members on the Council. In order to fulfill the eligibility requirements of a sheller member, witnesses stated that the term ''sheller'' should only include those who shell more than 1 million pounds of inshell pecans in a fiscal year. Witnesses explained that the proposed 1 million pound threshold delineates a commercial shelling operation from smaller operations used for personal use or by a larger grower that also shells. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''sheller'' has changed from § 986.35 to § 986.36 and is incorporated into the proposed regulatory text of this Recommended Decision.

The proposed order also includes proposed definitions for inshell and shelled pecans. These definitions were identified as § 986.23 and § 986.36, respectively, in the Notice of Hearing. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section numbers for these definitions are changed to § 986.24 and § 986.37, respectively. These changes are incorporated into the proposed

regulatory text of this Recommended Decision.

As discussed in Material Issue 5(e) below, the proposed order would include the authority for the Council to recommend handling regulation. If the order were implemented and handling regulation effectuated, all pecans grown and handled within the proposed production area would be subject to mandatory compliance. According to the record, pecans subject to handling regulation would be referred to as ''merchantable pecans'' or pecans meeting the minimum grade requirements implemented under proposed § 983.69. Witnesses explained that minimum grade requirements could be implemented for both inshell and shelled pecans. The proposed definition for merchantable pecans was identified as § 986.26 in the Notice of Hearing. However, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''merchantable pecans'' has changed from § 986.26 to § 986.27 and is incorporated into the proposed regulatory text of this Recommended Decision.

In further discussing the need for the proposed definition of ''merchantable pecans,'' witnesses explained the need for accurate industry data. As further discussed in Material Issue 5(f), the proposed order includes handler reporting provisions for handler receipts, inventory, and merchantable pecans, among other information. This data would allow the Council to calculate production and supply of pecans in the market. However, in order to arrive at an accurate calculation of the above, witnesses explained the need to capture the loss of pecan volume between the volume of cleaned pecans and those meeting any regulation in effect. Witnesses referred to this loss of volume as ''disappearance'' and recommended that the term be defined.

As defined in § 986.12 of the Notice of Hearing, the term disappearance means ''the difference between the sum of grower-cleaned production and handler-cleaned production'' and the sum of ''merchantable pecans and merchantable equivalent of shelled pecans.'' Witnesses clarified that in the absence of handling regulation, disappearance would be zero.

Record evidence also indicates that the calculation of ''disappearance'' should be on an inshell basis. The phrase ''merchantable equivalent of shelled pecans'' at the end of this proposed definition is unclear given the proposed definition of ''merchantable'' does not factor in equivalency between inshell and shelled. USDA recommends further modifying the definition of ''disappearance'' by replacing the phrase ''the sum of available supply of merchantable pecans and merchantable equivalent of shelled pecans'' with ''the sum of inshell and shelled merchantable pecans reported on an inshell weight basis.'' This modification has been incorporated into the proposed regulatory text of this Recommended Decision. Also, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of disappearance has changed from § 986.12 to § 986.13 and is incorporated into the proposed regulatory text of this Recommended Decision.

According to the record, the term ''pack'' should be included as a handling activity and should be defined to mean clean, grade, or otherwise prepare pecans for market as inshell or shelled pecans. Witnesses explained that this term is often used as a general reference to handling activities. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of pack has changed from § 986.27 to § 986.28 and is incorporated into the proposed regulatory text of this Recommended Decision.

Record evidence indicates that pecans are customarily traded among handlers. As further discussed in Material Issue 5(c), trade among handlers predominantly occurs as a means for individual handlers to buy or sell pecans to meet the specific needs of their respective customers. Witnesses also explained that some handlers are better equipped than others to handle pecans that require additional work, such as substandard pecans or pecans that require shelling or roasting.

According to the record, ''inter-handler transfer'' should be defined to mean the movement of inshell pecans from one handler to another inside the proposed production area for the purpose of additional handling. Witnesses further clarified that if pecans are transferred from one handler to another, any assessments due or compliance with any handling requirement that may be in effect under the proposed order could be assumed by the receiving handler.

The proposed definition of ''inter-handler transfer'' was published as § 986.25 in the Notice of Hearing. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''inter-handler transfer'' has changed to § 986.26 and is incorporated into the proposed regulatory text of this Recommended Decision.

The record shows that all of these activities, from initial receipt of the pecans at the handling facility, to final packaging of the product, should be included in the definition of ''handle.'' These activities were identified as those necessary to prepare pecans for entering the stream of commerce and, as such, should be included in the definition of the process that makes a person a ''handler'' and, thus, subject to regulation under the proposed order.

In addition, the hearing record indicates that placing pecans into the current of commerce from within the production area to points outside thereof for the purpose of hulling and drying, further processing, or exporting would also constitute handling. In such cases, the individual responsible for placing pecans into the current of commerce, even if it is initially the grower, would be considered a handler and would be subject to the provisions of the proposed order.

Material Issue Number 5(a)—Other Definitions

Certain terms should be defined for the purpose of specifically designating their applicability and limitations whenever they are used in the order. According to the record, these include the following:

''Act'' should be defined as the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C.. 601–674). This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

According to record evidence, ''affiliation'' should be defined, as it is important within the context of proposed eligibility requirements for Council members and their alternates. Witnesses explained that ''affiliation'' should be defined to mean a person who is: A grower or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the grower or handler specified; or a grower or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified grower or handler with one or more other growers or handlers. According to the hearing record, the term ''control'' should be further defined to mean ''the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a handler or a grower whether through voting securities, membership in a cooperative, by contract or otherwise.''

Witnesses explained that this definition of ''affiliation'' is proposed to ensure that persons who are in business together as handlers or growers are limited in their representation on the administrative Council. The record evidence is that the membership of the Council should be representative of the industry as a whole. No one group of people who share common business interests should be able to gain control of Council decision making. To accomplish this goal, the order should limit the number of positions the members of any one affiliated group could hold.

The term ''affiliation'' should be defined broadly so that it encompasses the many different relationships through which people have common business interests.

Witnesses at the hearing gave several examples to illustrate their view of how this limitation on Council membership should work. In the case of a corporate handler, all of its shareholders should be considered an affiliated group because they would be connected in a proprietary capacity and share in the ownership and control of the corporate handler. In this scenario, the shareholders and employees of the corporation would be limited to one handler member on the Council; they could not hold both handler positions. If the corporation was also a pecan grower, a grower member could also represent the affiliated group. In no case could more than two Council members represent that affiliated group.

According to the record, the term ''to certify'' means the issuance of a certification of inspection of pecans by the inspection service. Witness testimony explained that this term would be relevant in the context of grade, size, or quality regulation that may become effective under the proposed order and the need for handlers to have their product inspected as to meeting those requirements. If regulation were implemented, inspection and certification would be required of handlers handling product grown within the production area. This term is revisited under the discussion of Material Issue 5(e).

''Confidential data or information'' should be defined to mean reports and records furnished or submitted by handlers to the Council which include data or information constituting trade secrets or disclosing the trade position, financial condition, or business operations of a particular handler or its customers. This term is relevant to proposed § 986.81 pertaining to disclosure of handler information. The confidentiality requirements in that provision of the order, discussed under Material Issue 5(f), are consistent with those contained in the Act.

According to the record, ''container'' should be defined to include a box, bag, crate, carton, package (including retail packaging), or any other type of receptacle used in the packaging or handling of pecans. Witness testimony explained that this term would become relevant in the context of pack and container regulation that may become effective under the proposed order. Witnesses discussed the potential need to standardize consumer packaging or bulk, wholesale containers for pecans. Standardized bulk or wholesale containers would provide for consistency and ease of wholesale price comparison between handlers. Consumer packaging could also become standardized to include improved packing material developed to prolong freshness or pecan quality.

''Council'' should be defined to mean the administrative Council, which would be established pursuant to the proposed provisions of § 986.45. The Act authorizes USDA to appoint an agency or agencies to assist in the administration of a marketing order program. This definition would identify the agency to locally administer the proposed pecan order. The Council would be comprised of nine pecan growers, six shellers, one at-large accumulator member, and one public member. The establishment of a Council would be important to ensure representation of the industry and consumers to USDA.

''Department'' or ''USDA'' should be defined to mean the United States Department of Agriculture, which is the governmental body responsible for oversight of Federal marketing orders and agreements. This definition allows the usage of the USDA acronym or reference to the USDA as the Department throughout the language of the proposed order. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''Department'' or ''USDA'' has changed from § 986.11 to § 986.12 and is incorporated into the proposed regulatory text of this Recommended Decision.

Farm Service Agency should be defined to mean that agency of the USDA. This definition also allows the usage of the FSA acronym throughout the language of the proposed order. The FSA is important in the context of the term ''pecan acres,'' as identified in newly numerated § 986.17, as it is the USDA agency responsible for defining appropriate definitions of pecan acres for native pecan orchards that do not organize their pecan trees in intentional rows. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''Farm Service Agency'' has changed from § 986.13 to § 986.14 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Fiscal year'' should be defined to mean the period beginning on October 1 and ending on September 30 of each year or such other period as may be recommended by the Council and approved by the Department. This period starts roughly one month prior to the beginning of the harvest season for pecans and would prescribe the period of conduct for the Council's administrative activities, such as preparing an annual budget of expenses and accounting for receipts and expenditures of funds. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''fiscal year'' has changed from § 986.14 to § 986.15 and is incorporated into the proposed regulatory text of this Recommended Decision.

According to the record, ''grade and size'' means the official grades of pecans and the official sizes of pecans as set forth in the United States Standards for Grades of Pecans in the Shell (1976) and United Stated Standards for Shelled Pecans (1969). Moreover, grade and size could refer to any future regulation recommended by the Council and approved by the Secretary. Witnesses explained that the authority to recommend such regulation under the proposed order would be important in updating the current U.S. grade standards. The U.S. grade standards were established in the late 1960s and early 1970s and are no longer reflective of grade and size terms currently used by the pecan industry. This authority to recommend grade and size regulation is further discussed in Material Issue 5(e). As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''grade and size'' has changed from § 986.15 to § 986.16 and is incorporated into the proposed regulatory text of this Recommended Decision.

The term ''handler inventory'' should mean all pecans, shelled or inshell, as of any date and wherever located within the production area, held and owned by a handler. Witnesses explained that collecting data regarding handler inventory, especially at the end of a fiscal year, is important to the industry's ability to assess the total amount of pecans available in the market. Handler

inventory, which was also referred to as ''carry-in inventory'' by some witnesses, refers to handler-warehoused pecans from one fiscal year into the next. Data on handler inventory is essential to the industry's ability to estimate prices for the upcoming crop. Witnesses stated that, out of all data, the lack of accurate handler inventory data is detrimental to understanding market trends within the pecan industry. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''handler inventory'' has changed from § 986.20 to § 986.21 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Inspection service'' should be defined to mean any inspection service authorized or approved by the USDA to inspect pecans. This term would be used in connection with any mandatory grade, size, or quality requirements that may be implemented under the proposed order. The inspection service would be responsible for inspecting and certifying that pecans meet the requirements of the order.

The record shows that the Federal or Federal-State Inspection Service would be designated as the agency responsible for conducting these activities. However, to provide maximum flexibility, the order should provide that any inspection service so authorized or approved by the Department may perform these functions. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''inspection service'' has changed from § 986.24 to § 986.25 and is incorporated into the proposed regulatory text of this Recommended Decision.

According to record evidence ''person'' should be defined to mean an individual, partnership, corporation, trust, association, or any other business unit. This definition is consistent with the definition contained in the Act. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''person'' has changed from § 986.29 to § 986.30 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Proprietary capacity'' should be defined to mean the capacity or interest of a grower or handler that, either directly or through an intermediary, is a property owner together with the rights of an owner, including the right to vote the interest in that capacity as an individual, shareholder, member of a cooperative, partner, trustee, or in any other capacity with respect to any other business unit. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''proprietary capacity'' has changed from § 986.31 to § 986.32 and is incorporated into the proposed regulatory text of this Recommended Decision.

Witnesses explained that this term is important to the proposed order and its provisions in that this language would make persons who are sharing ownership of a common business entity ''affiliated'' (see previous definition) for purposes of eligibility to serve on the Council. The term ''proprietary capacity'' is intended to imply ownership of a business as compared to an employee status only.

According to the record, the term ''representative period'' should mean the previous four fiscal years for which a grower's annual average production is calculated. This term is relevant in the context of determining a grower's eligibility to participate in a grower referendum or to qualify as eligible to sit as a member or alternate member on the Council. Because of the cyclical production and yield nature endemic to pecans, proponents of the order stated that the average of four years of production data would be necessary in order to appropriately determine a grower's production yield. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''representative period'' has changed from § 986.33 to § 986.34 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Secretary'' means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in the Secretary's stead. The term includes any other officer or employee of the United States Department of Agriculture who has been delegated or who may be delegated the authority to act on behalf of the Secretary. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''Secretary'' has changed from § 986.34 to § 986.35 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Trade supply'' should mean the quantity of merchantable inshell or shelled pecans that growers will supply to handlers during a fiscal year for sale in the United States and abroad. Witnesses clarified that, in the absence of § 986.69, setting forth minimum grade regulation for merchantable pecans, trade supply should be the sum of handler-cleaned production and grower-cleaned production. A revision to the definition of ''trade supply'' as published in the Notice of Hearing to include the above language was proposed by the Board. This change is reflected in the proposed order language included in this Recommended Decision. Moreover, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''trade supply'' has changed from § 986.38 to § 986.39 and is also incorporated into the proposed regulatory text of this Recommended Decision.

''Unassessed inventory'' should mean inshell pecans held by growers or handlers for which no assessment has been paid to the Council. Witness testimony explained that this term is necessary in the context of both assessment collection and reporting requirements. As discussed under Material Issue 5(c), unassessed pecan inventory could be warehoused (defined below) by either a grower or a handler. If unassessed inventory is warehoused by a handler, on August 31 of any given fiscal year that inventory would be subject to assessment. This provision would allow for accurate recordkeeping and timely assessment collection for that fiscal year. If unassessed inventory is warehoused by a grower, that inventory would be assessed upon its receipt by a handler and would not be eligible to be transferred to a subsequent handler through an inter-handler transfer. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''unassessed inventory'' has changed from § 986.39 to § 986.40 and is incorporated into the proposed regulatory text of this Recommended Decision.

As discussed above, ''warehousing'' means to hold unassessed inventory. According to witness testimony, both growers and handlers may decide to hold inventory in storage rather than place product on the market. Witnesses explained that this practice is common when market prices are unstable immediately after harvest. By holding inventory until later in the season, a grower or handler may benefit from a more stable market or an increased market price due to perceived supply shortages.

Witnesses also explained that warehoused inventory could refer to either assessed or unassessed inventory. A revision to the definition of ''warehousing'' as published in the Notice of Hearing to include assessed inventory was proposed by the Board. This change is reflected in the proposed

order language included in this Recommended Decision. Moreover, as a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''warehousing'' has changed from § from 986.41 to § 986.42 and is incorporated into the proposed regulatory text of this Recommended Decision.

''Weight'' means pounds of inshell pecans, received by handler within each fiscal year. To convert the weight of shelled or kernel pecans into an equivalent inshell weight, the kernel weight would be multiplied by two. According to the record, the term weight would be used in the context of assessments, which would be calculated on the inshell weight handled by handlers. As a conforming change to the addition of a new § 986.10, Cracks, the proposed section number for the definition of ''weight'' has changed from § 986.42 to § 986.43 and is incorporated into the proposed regulatory text of this Recommended Decision.

Material Issue Number 5(b)—Administrative Council

Pursuant to the Act, it is necessary to establish an agency to locally administer the order and to provide for effective and efficient function of its operation. The establishment and membership of an administrative Council is addressed in §§ 986.45 and 986.46 of the proposed order.

The hearing record shows that the Council should consist of 17 members. Nine members should be growers, six members should be shellers, one member should be an at-large accumulator, and one member should be selected from the general public. Each member should have an alternate member who, possessing the same qualifications as the member, could serve in that member's place and stead in the event that the Council member could not fulfill his or her duties. Grower and sheller members and their alternates would be selected by the Secretary from nominees submitted by the Council. The two at-large seats would be nominated by the Council and appointed by the Secretary.

Allocation of Membership

For the purpose of grower and sheller representation, the proposed order provides that the production area be divided into three regions (see Material Issue 3). The record indicates that grower representation from each region should be based, in large part, on the relative volume of production in each region. As such, witnesses testifying to the establishment of the administrative Council stated that each region should be allocated three grower seats and two sheller seats to represent the interests and needs of their respective region. This allocation equally distributes grower and sheller representation among the three proposed regions.

Witnesses explained further that grower and sheller seats should be allocated such that small business entities are given the opportunity to represent their unique perspective within each region. To achieve this, witnesses explained that each region should have two grower seats allocated to growers whose acreage is equal to or exceeds 176 pecan acres. These seats should be referred to as Seat 1 and Seat 2. Each region should also have a grower Seat 3 allocated to a grower whose acreage does not exceed 176 pecan acres. Witnesses explained that the 175 acre threshold is intended to delineate grower operations that are comparatively small to those above the threshold.

It is important to note that the order language included in the Notice of Hearing defined grower Seat 3 as growers whose acreage does not exceed 175 pecan acres. Witnesses pointed out that this language left a gap in the seat definition for growers whose acreage fell between 175 and 176 acres. For example, would a grower who had 175.5 acres be eligible to serve in grower Seats 1 and 2, or would he or she be eligible for grower Seat 3? To correct this oversight, the Board recommended changing the definition of grower Seat 3 to include growers whose acreage is less than 176 acres. This revision has been incorporated into the proposed order language of this Recommended Decision.

To accommodate the smaller sheller operations, witnesses explained that each region should have one sheller seat (Seat 1) allocated to a sheller who handles more than 12.5 million pounds of inshell pecans and a second seat (Seat 2) allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans.

According to the record, grower and sheller nominees and their alternates must be growers and shellers at the time of their nomination and must remain so for the duration of their tenure. If a member ceases to satisfy this requirement, he or she would be subject to the proposed terms of the eligibility and vacancy requirements under sections 986.48 and 986.51, discussed below.

Council Nominations and Voting for Nominees

In order for the proposed Council to function, a mechanism is required by which members and alternate members would be nominated by their peers and selected and appointed by the Secretary. Nomination procedures are set forth in the proposed provisions of § 986.46.

Initial Council

The proposed order provides that USDA would conduct nominations for initial grower and sheller members of the Council. It also states that the first nominees must meet the same qualifications as required for their successors. USDA would conduct the initial nominations of grower and sheller members and alternates only. The initial public member and alternate would be nominated by the industry members of the Council, as described later in this document.

According to witness testimony, initial grower and sheller member nominations could be made either at industry meetings, by mail, or by email. Names of nominees would be submitted to USDA for inclusion on the nomination ballot on approved nomination forms. Witnesses explained that approved forms should include: The name of the nominated grower or sheller; the name and signature of the nominating grower or sheller; and two additional names and respective signatures of growers in support of the nomination or, in the case of a sheller nomination, one additional signature of a sheller. The names of additional supporters of the nominee are intended to ensure that any candidates put forward for consideration have a base of support prior to the nomination vote. In addition to this information, subject to the approval of the Secretary, the Council could require more information.

Sample nomination forms, along with all of the other requisite forms needed for nomination and selection of the first Council, were submitted as evidence into the record for USDA consideration. These forms are further discussed under the Paperwork Reduction Act section of this Recommended Decision.

While the Department would have discretion in determining a reasonable process to conduct initial Council nominations, witnesses stated that it would be preferable that the procedures provided in proposed § 986.46(b) for identifying member and alternate nominees, casting nomination ballots, and the accounting thereof, be followed. Paragraph (b) of § 986.46, which outlines the procedures for successor Councils, is discussed below.

Successor Councils

The record evidence indicates that the Council staff should conduct subsequent nominations for grower and

sheller members of the Council. At the end of the first four-year term of the initial Council and in the nomination and selection of the second Council only, roughly half of the Council seats would be eligible for terms of two years while the remaining would be eligible for four years. Proponents of the order recommended this provision so that Council membership terms would be staggered. These witnesses stated that staggered terms would prevent the Council from potentially having a membership full of individuals unfamiliar with the working of the program. To initiate the staggered terms, § 986.50(a) proposes that member and alternate seats assigned two-year terms for the seating of the second Council only shall be as follows:

(1) Grower member Seat 2 in all regions shall be assigned a two-year term;

(2) Grower member Seat 3 in all regions shall, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions shall be assigned a two-year term.

The record evidence shows that grower and sheller member nominations for the Council would entail several steps.

The first step would be a call for nominations. As mentioned above, names of nominees would be submitted to the Council for inclusion on the nomination ballot on approved nomination forms. If a grower or a sheller is engaged in business in more than one region, that grower or sheller would be nominated in the region in which they conduct the largest volume of their business. Witnesses explained that this requirement would ensure that peer growers and shellers are nominating individuals that represent the region in which the grower or sheller is most heavily vested. This would also prevent grower or sheller businesses from using their voting to influence Council representation in regions where they have relatively small portions of their business.

The next step in the Council establishment process would be the placement of nominees on the nomination ballot and the voting for nominees by peers.

Grower Nominees

Witnesses explained that individuals seeking candidacy for nomination to a grower seat would be required to designate the region in which they seek nomination and substantiate their qualification as a grower, or designated representative of a grower, in that region. However, testimony also clarified that the order would not require that the candidate be a resident of that region. Witnesses explained that it would not be reasonable to impose such a requirement since not all growers live in the same region in which they produce pecans. Such a residency requirement would, therefore, preclude a number of pecan growers from being able to serve on the Council.

Record evidence states that only growers would be qualified to serve as grower members and to participate in the nomination of grower members and their alternates. A grower can be a corporation, partnership, limited liability company, trust or other legal entity, as well as a sole proprietorship owned by an individual. Owners of pecan orchards could designate an officer or employee to seek membership and to cast the votes on their behalf. As proposed, officers and employees would not include professional farm managers who perform farm management services for a number of different growers without being an employee or an officer of the grower. The intent is to limit those eligible to serve as grower members to persons who are involved, either as a grower with a proprietary interest in the pecan industry or an employee working in the industry for a grower.

Once nominee candidates are identified as being eligible, the Council would mail nomination information to all growers who are on record with the Council. Nomination information would include official nomination ballots indicating the nominees for each of the three grower member seats in that region, along with voting instructions. Growers would then cast ballots at either meetings of growers, by mail, or by email, as designated by the Council.

On the ballot, growers would indicate their nomination for the grower seats and also indicate their average annual volume of inshell pecan production for the preceding four fiscal years.

Each grower would be entitled to cast one vote, either in person or through an authorized officer or employee, for each grower member position to be filled in his or her region. A grower would only be able to cast his or her vote in the region in which that grower produces pecans. If the grower were engaged in producing pecans in more than one region, then the grower would need to select a region in which to participate as a nominee and/or as a voter. As discussed above, record evidence shows that the grower would cast his or her ballot in the region in which that grower grows the largest volume of his or her production. A grower would not be allowed to vote for nominee candidates in more than one region.

Grower nominee voting instructions would direct voters to identify candidates to fill the designated grower Seats 1, 2 and 3. Ballots for grower Seat 1 would be counted based on the volume of production represented in the ballots cast. The nominee candidate for this seat in each region would be the grower receiving the highest volume of production votes. The grower receiving the second highest volume of production votes would be the alternate member nominee for this seat. In case of a tie vote, the nominee would be selected by a drawing.

Grower nominees for Seats 2 and 3 receiving the highest number of votes would be designated nominees for their respective region. Alternates for each nominee would be the candidates receiving the second highest number of votes in the same region. In the case of a tie, witnesses recommended that final nominees and their alternates be selected by a drawing.

The order language published in the Notice of Hearing did not specify whether or not the volume of production would be calculated on an inshell or shelled weight basis. Witnesses explained that a grower's volume of production should be reported and calculated on an inshell basis. The Board recommended adding the phrase in parenthesis ''(pounds of inshell pecans)'' to the first full sentence of § 986.46(b)(3)(iii) to clarify that volume should be calculated as such. This clarification has been incorporated into the proposed order language included in the Recommended Decision.

Witnesses explained that both grower Seats 1 and 2 are designated to growers with equal to or more than 176 acres of pecans. By assigning one seat (Seat 1) to be voted upon by volume and the other seat (Seat 2) to be voted upon by number of ballots cast, two different perspectives would be represented. According to the record, the volume weighted vote would likely represent the larger grower business of the two seats, and the ballot vote would likely represent a mid-to-large grower.

Sheller Nominees

The nomination procedure for sheller seats on the Council would be conducted similarly to the grower seat nominations. Individuals seeking candidacy for nomination to a sheller seat would be required to designate the region in which they seek election and substantiate their qualification as a sheller, or designated representative of a sheller, in that region. However, as

mentioned above, testimony also clarified that the order would not require that the candidate be a resident of that region.

Record evidence states that only shellers would be qualified to serve as sheller members and to participate in the nomination of sheller members and their alternates. Shellers can be corporations, partnerships, limited liability companies, trusts or other legal entities, as well as sole proprietorships owned by individuals. The owners of pecan shelling operations could designate an officer or employee to seek membership and to cast votes on their behalf.

Once nominee candidates are identified as being eligible to serve in either sheller Seat 1 or 2, the Council would mail nomination information to all shellers who are on record with the Council. Nomination information would include official nomination ballots indicating the nominees for each of the two sheller member seats in that region, along with voting instructions. Shellers would then cast ballots at either a meeting of shellers by mail, or by email, as designated by the Council.

Each sheller would be entitled to cast one vote, either in person or through an authorized officer or employee, for each sheller member position to be filled in his or her region. A sheller would only be able to cast his or her vote in the region in which that sheller conducts their business. If the sheller were engaged in shelling pecans in more than one region, then the sheller would need to cast their ballot in the region in which he or she shelled the largest volume of pecans in the preceding fiscal year. A sheller would not be allowed to vote for nominee candidates in more than one region.

Sheller nominee voting instructions would direct voters to identify candidates to fill the designated sheller Seats 1 and 2. The sheller nominees receiving the highest number of votes would be designated nominees for their respective region. Alternates for each nominee would be the candidates receiving the second highest number of votes in the same region. In the case of a tie, final nominees and their alternates would be selected by a drawing.

Members of the Council, at the time of their selection and during their term of office, must be pecan growers or shellers or officers or employees of a grower or handler. If that relationship should terminate during the member's or alternate's term on the Council, that person would become disqualified from further serving, and the position would be deemed vacant.

At-large Member Nominees

According to the record, once the grower and sheller members of the Council are selected and appointed by the Secretary, the Council would identify nominees for a public member and an accumulator member, plus respective alternates. These provisions are proposed under § 986.46(b)(6). The public member and alternate public member may not have any financial interest, individually or corporately, or be affiliated with persons vested in the pecan industry. The accumulator member and alternate accumulator member must meet the criteria set forth in § 986.1, Accumulator, and may reside or maintain a place of business in any region.

Witnesses explained that industry Council members would be in the best position to identify individuals who are qualified and willing to serve. Once the Council identified these candidates, the Council would make a recommendation to USDA for final approval and selection by the Secretary.

Selection by Secretary

Record evidence states that once the nomination process for grower and sheller members is completed, and the industry has voted on Council member and alternate candidates, a nomination report would be sent to the Secretary. The nomination report would include a certified summary of the nomination results and any other information deemed necessary by the Council for consideration by the Secretary. Other information could include, for example, the background and acceptance statements of the nominee candidates. According to the proposal, the report should be submitted on or before the 15th of July of the fiscal year in which the candidates would begin their term so that the Secretary has time to review, select and appoint Council members and their alternates prior to the beginning of the program's next fiscal year.

As previously mentioned, the Council would nominate the public member and accumulator member and their alternates. The proposal indicates that these nominations should be submitted to the Secretary by the 15th of September of the fiscal year in which their nomination is due. As with the other members of the Council, the Secretary would also be responsible for selecting and appointing those members.

Nominees would be required to indicate in advance of their selection that they are willing to accept the position for which they were nominated. Agreeing in advance to serve as a Council member or alternate would avoid possible delays in the appointment of the Council.

In the event that any of the above nominations are not made within the time and manner specified in the proposed order, the Secretary could appoint members and alternates without regard to nominations.

One witness suggested that the Secretary's authority to select and appoint members to the Council would be limited to only considering the nominees having received the highest votes for their respective seats. To the extent that record evidence supports that the nomination process is intended to present the Secretary with the industry's preferred candidates, this witness's explanation is consistent with the record. However, the results of the proposed process would not limit the Secretary's authority to select and appoint members of the Council.

According to the Act, the power to promulgate marketing orders, as well as to identify and appoint members to locally oversee the program's operation, rests with the Secretary. Moreover, all authorities, duties, and responsibilities assigned to a marketing order's administrative body are subject to review and approval by USDA.

As several witnesses explained, the nomination process is intended to present the Secretary with qualified candidates that have the support of their peers to represent their interests in the activities and management of the marketing order program. In the selection and appointment process, these results are strongly considered and, more often than not, accepted. However, the proposed Council's authority to oversee nominations does not include the authority to select and appoint members of the Council. Therefore, the testimony stating that the Secretary's power to appoint and select members of the Council is not consistent with the Act and the issuance of any marketing order Recommended Decision.

Included in the one brief that was filed on behalf of the Board, the issue of limiting the Secretary's power to select and appoint members of the Council was raised. This brief presents an interpretation of the Act that concludes the Council is delegated by the Secretary under the authorities of such Act to select members to administer the program. The brief continues to offer examples of the Federal marketing orders for pistachios, walnuts and dates, as current programs whose administrative bodies have authority to ''vote'' for their membership for

presentation to the Secretary. The brief infers that the said authority to ''vote'' results in a limiting of the Secretary's power in that those candidates must be selected and appointed. In these two assumptions, the brief is not entirely correct.

As stated above, the Secretary has complete authority and oversight of Federal marketing orders, including promulgation, amendment, selection and appointment of industry representatives (including program staff), budgets, assessment rates, implementation of regulation, and termination. This is further explained under proposed § 986.56. Therefore, to the extent that the proposed Council would act as a delegate of the Secretary with the appurtenant powers and duties described in proposed §§ 986.53 and 986.54, that delegation is subject to USDA oversight and Secretary approval.

Regarding the brief's interpretation of the administrative functioning of other orders, the brief's understanding of the context in which the term ''vote'' is used is misunderstood. As with all Federal marketing orders, the industry is called upon to identify its nominees to represent its interests as members of an administrative body. The process by which these nominees are identified is commonly referred to as a ''nomination vote.'' In this process, industry members cast nomination ballots and, in essence, ''vote.'' However, the results of those votes do not result in the election of members; the results identify nominee candidates that are forwarded for the Secretary's consideration prior to selection and appointment with the Secretary's approval.

The brief correctly states that, in the event that an industry nominee is not selected and appointed by the Secretary, the resulting action would be to hold a second nomination process. The brief also correctly raises a concern of timing. Currently, the proposed language in § 986.46(5) would require nominations to be reported to the Secretary on or before July 15 of nomination years. USDA recommends a modification to this language in order to accommodate an extension of this deadline if a second nomination process were needed. Accordingly, USDA recommends inserting the following sentence after the second sentence in paragraph § 986.46(5): ''In the event that a second nomination process is required to identify nominee candidates, the resulting nominee information may be reported to the Secretary after July 15 and before September 15.'' This language has been incorporated into the proposed regulatory text of this Recommended Decision.

The record also shows that the Council should have authority (with USDA approval) to establish additional rules and regulation governing the nomination process, if deemed necessary. This authority would apply to both grower and sheller member nominations.

One clarifying change to § 986.45 as published in the Notice of Hearing was recommended by the Board. The Board proposed removing the phrase ''nominated and selected in the same way and'' from the first sentence of the first paragraph. Witnesses stated that this language is incorrect as alternate member nominees are identified as those candidates receiving the second highest number of votes in the vote for nominee Council membership. The above-identified phrase could lead to confusion and the misunderstanding that a separate voting process for alternate member nominees would be held. The proposed modification is intended to remove this potential for misunderstanding. This change is reflected in the proposed regulatory text included in this Recommended Decision.

Two clarifying changes to § 986.46 as published in the Notice of Hearing were recommended by the Board. These changes include:

(1) In the second sentence of § 986.46(a), inserting the words ''votes on'' between ''cast'' and ''nomination.'' Witnesses explained that this modification would clarify the sentence's intended reference to the eligibility to vote as proposed in the order.

(2) In the first sentence of § 986.46(b)(3)(ii), the phrase ''vote for the grower nominee candidates'' should replace the word ''nomination'' between ''their'' and ''for.'' Witnesses stated that this modification would clarify that this paragraph relates to the casting of ballots for nominee candidates rather than the submittal of a nomination.

These changes are reflected in the proposed regulatory text included in this Recommended Decision.

Alternate Members

Proposed § 986.47 of the order provides for the nomination and selection of an alternate member for each Council member. Alternates would be subject to the same eligibility requirements as Council members. They would act in the place and stead of the Council members for whom they are alternates when the Council members cannot fulfill their obligations. Alternates would provide continuity and stability to Council operations by ensuring full representation of the industry, including their particular region and group.

Alternate members would be nominated in the same manner as Council members, except that the recommended alternate(s) would be the individual(s) receiving the next highest votes after the nominee(s) receiving the highest number of votes.

When serving in the place and stead of their Council members, alternate members would be able to exercise all of the rights, duties and powers of those members as though they were serving as full members of the Council.

Witnesses also explained that in the event any member of the Council and his or her alternate are both unable to attend a meeting of the Council, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member. According to the hearing record, ''same group'' would mean that growers would be alternate alternates for growers, and shellers would be alternate alternates for shellers. To the extent practicable, the alternate alternates should also be from the same region. This provision would allow Council quorum and meeting requirements to be met in the event that business needed to be conducted and rescheduling of the Council meeting would cause an undue burden or delay.

Record evidence also shows that an alternate member should succeed his or her member in the event of that member's death, removal, resignation or disqualification. The alternate would then serve until a successor was selected and appointed by the Secretary.

Proposed § 986.48 of the order would clarify eligibility requirements for individuals wanting to serve as Council members or alternates.

As evidenced above, witnesses stipulated that grower and sheller members and alternates should be, at the time of selection and during their term of office, a grower or sheller (as identified by their appointed seat) or an officer or employee of a grower or sheller in the region and in the classification for which nominated. Witnesses explained that the term ''classification'' referred to the business size categories as identified by grower Seats 1, 2 or 3, and sheller Seats 1 and 2.

If a grower qualified to serve as both Seat 1 and 2, that grower would be required to select the seat for which he or she desires to be nominated, and the grower ballot shall reflect that selection. A grower could not be included on the ballot for two different member seats.

Record evidence also clarifies that any member or alternate member who, at the

time of selection and appointment by the Secretary, was serving as an employee or affiliate of a grower or sheller operation may no longer be eligible to fill their seat if their employment or affiliation is terminated. At the end of such relationship, the position would be deemed vacant.

Lastly, the proposed eligibility requirements also indicate that any person nominated to serve as a public member or alternate public member may not have a financial interest in any pecan grower or handling operation.

Term of Office

Record evidence suggests that the term of office lasts for four years and that the nomination process and beginning of the term should take place in late summer. The months of July and August represent a natural break in the pecan production cycle, with each new harvest beginning typically in October, or at the latest in December, depending on the region. Moreover, witnesses indicated that this time frame would allow adequate time for Council members and staff to prepare an annual budget, develop a marketing policy for the upcoming production year, and make any recommendations to the Department for any needed regulatory changes prior to harvest activities.

In addition, witnesses at the hearing indicated that terms should be staggered so that approximately half of the Council members' positions would be filled every two years. This provision would ensure that continuity in experience among Council members was maintained, yet provide for new members with new ideas and fresh perspectives to participate in the administration of the order. To initiate this process, witnesses recommended that the second Council members nominated be divided into two groups, by a drawing where necessary, to determine whether they would be seated for a term of two years or four years. According to the record, the staggering of terms should result in the following:

(1) Grower member Seat 2 in all regions would be assigned a two-year term;

(2) Grower member Seat 3 in all regions would, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions would be assigned a two-year term.

As a result, four of the grower member and alternate seats and three of the sheller member and alternate seats shall be seated for terms of two years. Remaining industry members and the public member (and their alternates) would serve an initial term of four years. This staggering of terms would cause approximately half of the members' and alternates' terms to expire every two years thereafter.

Term Limits

Record evidence supports term limits to increase the involvement of pecan growers and shellers and increase industry participation in administering the marketing order. Term limits should apply to all Council members and alternates, including those representing the public. The maximum number of terms that an individual would be allowed to serve would be two consecutive four-year terms of office or a maximum of eight consecutive years on the Council. The tenure requirements would apply to both Council members and alternate members. Once a person has served as a member and/or alternate for eight years, that person would not be eligible for re-nomination. In the case of the second Council seating in which half of the initial Council members would be given a two-year term, the two-year term would be counted as a full four-year term in the calculation of that member's tenure. Witnesses explained that this would be necessary in order to avoid allowing those members to potentially serve a total of ten years, as would be the case if the two-year term were not counted as tenure. Lastly, the shorter, two-year term is only applicable once as it is necessary to create staggered terms for subsequent Councils.

However, witnesses also explained that, if selected, an alternate having served up to two consecutive terms could immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a member who, after serving for up to two consecutive terms, could serve as an alternate if nominated without any interruption in service. If a person were to serve in either one of the above scenarios, that person would not be able to serve again as a member or an alternate for at least twelve consecutive months. He or she would be eligible to serve again after 12 consecutive months out of office.

Witnesses clarified that in all cases, each member and alternate member would continue to serve until a qualified successor is selected.

Vacancies

According to the record, any vacancy on the Council would be filled by a majority vote of the Council members remaining for the remaining unexpired term of the vacant position. This authority appears in proposed § 986.51. The replacement must meet all of the qualifications set forth as required for any other nominee for the position, and that person's qualifications would have to be certified to USDA. The Secretary could then appoint the nominee to serve the balance of the term.

This procedure would eliminate the need to conduct a special nomination to fill a vacancy for the balance of a term. It would also serve to address situations in which a member's position is vacant and the alternate declines the position or is not available to fill the vacancy, as provided in proposed § 986.51. The authority could also be used to fill a vacancy for an alternate member.

Compensation

While testimony supported reimbursement of necessary expenses incurred by Council members attending meetings, witnesses testified that no compensation should be made to pecan growers and shellers for their service on the Council. There was also testimony that to the extent the Council requested the attendance of alternate members, those alternates would also be entitled to reimbursement of their expenses.

Record evidence considered compensation, in addition to the necessary expenses, of the public member. Witnesses explained that in order to get the level of experience and background required to serve as a qualified, effective public member, it might be necessary to compensate that person for his or her time. However, witnesses also stated that compensation would need to be set at a reasonable level and should be consistent with that person's experience and background.

In conclusion, the hearing record supports the reimbursement of expenses necessary and incidental to performing one's duties as a Council member, but not the compensation of time or service in that position.

Council Powers and Duties

The Council, under proposed § 986.53, should be given those specific powers that are set forth in section 608c(7)(C) of the Act. Such powers are necessary for an administrative agency, such as the proposed Council, to carry out its proper functions. According to record evidence, the Council would have four general powers under the proposed provisions of this order:

(1) To administer the provisions of the order;

(2) To adopt by-laws, rules, and regulation for the implementation of the order with the approval of the Department;

(3) To receive, investigate, and report to the Department complaints regarding violations of the order; and

(4) To recommend marketing order amendments to the Department.

These powers are necessary to carry out the Council's functions under both the proposed order and the Act. Witnesses indicated that these powers would enable the Council to make recommendations to the Department that reflect the conditions in the industry from their knowledge and experience.

The specific duties of the Council as set forth in § 986.54 of the proposed order are necessary for the discharge of its responsibilities. These duties are similar to those typically specified for administrative agencies under other marketing order programs. They pertain to specific activities authorized under the order, such as investigating and compiling information regarding pecan marketing conditions, and to the general administration of the program, including hiring employees, appointing officers, and keeping records of all Council transactions. The proposed order delineates the Council's duties as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he or she may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Council to be audited by one or more competent public accountants at least once for each fiscal year and at such other times as the Council deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to pecans and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and,

(h) To recommend by-laws, rules and regulation for the purpose of administering this part.

Witnesses explained that the above-outlined duties are important to the efficient and functional operation of the Council and that they reflect necessary and standard business practices.

Quorum and Voting Provisions

The record evidence is that once the Council is appointed, a quorum of the Council would consist of twelve Council members. This would include shellers, growers, the at-large accumulator, and the public member. Except as discussed below, any action of the Council would require the concurring vote of a majority of the Council members present. An alternate could serve as a member for purposes of constituting a quorum and voting if the member is absent.

Record evidence indicated, however, that certain issues are of sufficient significance to the industry that action should require a greater degree of consensus than a simple majority vote would demonstrate. Witnesses testified that there are ten areas that should require at least twelve concurring votes, prior to any recommendation being made to the USDA.

The first of these issues include the establishment of or changes to the Council's by-laws. Witnesses felt that the importance of by-laws to the operation of the order merited a robust discussion and more than majority consensus in either their establishment or future modification. Several witnesses testified to the importance of by-laws and their role in providing a foundation to the business functioning of the order. Similarly, witnesses felt that the appointment of the proposed program's manager or chief executive officer, as well as administrative issues relating to their responsibilities and employment, were equally important and merited the same level of super-majority consensus in decision-making thereto.

The third and fourth issues witnesses claimed should require twelve concurrent votes are the formulation and approval of the annual budget and the annual assessment rates. Because these issues directly impact regulated entities and represent funds collected from the industry for the benefit of the industry, witnesses explained that a high level of consensus on these issues was paramount. Witnesses stated that Council members will be tasked with the judicious management of assessment funds, and any plan to spend them should require thorough discussion and widespread support.

Similarly, witnesses stated that issues arising from non-compliance or audits would also require a super-majority determination. Because compliance and audit challenges have the potential to impact both the administration of the order as well as handler operations under regulation, decisions made with regard to these issues should measure and require widespread consensus.

With regard to the potential need to redefine regions, reapportion or reallocate Council membership, or modify the eligibility requirements of growers or shellers, the record indicates that recommendations related to changes in these factors should require a higher level of Council member agreement. Because of the important role that growers have in the promulgation and continuance of the program, approval of future amendments and changes to representation on the Council, the eligibility of a person to qualify as ''grower'' under the order is essential to the order's existence. Witnesses explained in great detail the method by which the current proposed eligibility requirements were identified. They emphasized that not only were they appropriate for the proposed program but that they were widely accepted. Proponents of the proposed order felt strongly that if grower eligibility were to be modified at a future date, that modification should require robust discussion and widespread support.

Witnesses expressed similar concerns for any future modification in the eligibility requirements for shellers. Because of the important role of shellers on the Council, future modification to the eligibility to serve as a sheller should be carefully reviewed prior to being modified. Again, proponents of the proposed order explained in great detail the method by which the current proposed eligibility requirements were identified. They moreover stressed that not only were they appropriate for the proposed program, but they were widely accepted by industry participants in discussion with the drafters of the initial proposal.

Lastly, witnesses indicated that the recommendation of any research and promotion activities, as well as the proposal of new regulation for grade, quality, size, pack or containers to USDA, should be thoroughly discussed and widely supported.

Because research and promotion activities are directly tied to the budget, which also requires a super-majority approval, spending of assessment monies on these activities should be judiciously reviewed. Witnesses stated that it would be important to identify research and promotion activities that would widely benefit industry participants. By requiring broad consensus, discussion of research needs across the industry would become necessary in order to develop an approved research strategy.

Similarly, witnesses explained that promotion activities should be geared primarily towards generic promotion of pecans to U.S. consumers and designed to benefit the industry as a whole. Proponents of the order explained that the super-majority voting requirement would result in the identification of such activities or projects.

According to the record, the proposal contains authority for the Council to recommend grade, size and quality regulation, as well as pack and container regulation. Such recommendations would be made by a super-majority of the Council for consideration and approval by USDA prior to implementation. Proponents of the proposed program explained that any recommended regulation should be based on a robust discussion, taking into consideration appropriate grade, size, and quality parameters in order to meet both customer demand and current industry tolerances. Regarding pack and container regulation, witnesses stated that consideration should be given to advances in packaging that could extend the shelf-life of pecans. Because pack and container requirements could result in increased costs for handlers, witnesses explained that any related regulation should be widely discussed and supported prior to becoming mandatory throughout the industry.

Proponents of the proposed order identified one issue that would require a unanimous vote of the full Council: Securing a bank loan. According to the record, if a bank loan is required for the purpose of financing start-up costs of the Council and its activities or for securing financial assistance in emergency situations, such action would require a unanimous vote of all members present at an in-person meeting. Witnesses further explained that in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken by other means. In such event, the Council's first preference would be a videoconference and its second preference would be a telephone conference, both followed by written confirmation of the members attending the meeting. Other parameters relating to the securing of a bank loan are discussed in Material Issue 5(c).

In summary, § 986.55 of this proposal provides that any recommended change or modification to the ten issues outlined above would require at least twelve concurring votes. Regarding the decision to secure a bank loan, the proposal indicates that a unanimous vote of the Council would be required. Any other actions by the Council could be determined by a simple majority of those voting.

The record shows that at Council meetings, members could cast their votes by voice or in writing. Participation by telephone would be permitted as long as the equipment used would allow all meeting participants to hear and communicate with each other. Telephone or similar communication equipment could include conference call equipment and/or audio-visual equipment that would allow all members to participate in a meeting simultaneously.

If for some reason an action must be taken without a meeting, the votes would have to be in writing. Witnesses testifying at the hearing stated that the types of Council actions contemplated without a meeting would be limited to issues of routine business or those of relatively minor importance, such as approval of meeting minutes. Such matters would not merit the time and expense of holding an assembled meeting. This proposed provision is common to several existing marketing orders and would enhance the Council's decision-making abilities on simple administrative matters.

The Board recommended modifying the first sentence of § 986.55(c)(1) by deleting ''and must be approved at an in-person meeting.'' According to the record, in-person meetings are preferred by witnesses testifying to the importance of Council decision-making procedures and voting requirements. However, requiring in-person meetings may cause undue challenges in the future conducting of Council business. Section 986.55 proposes alternative methods for the proposed Council to meet and guidelines to follow in the event that decision-making votes are cast at non-in-person meetings. The proposed modification would relieve the proposed requirement that all decision-making votes made by the proposed Council be made at in-person meetings. This proposed language is incorporated into the proposed regulatory text of this Recommended Decision.

Proposed § 986.56, Right of the Secretary, clarifies the power of the Secretary in the oversight and administration of the marketing order. According to the proposal, the members and alternates as well as any agent or employee appointed by the Council shall be subject to removal or suspension by the Secretary at any time. Moreover, each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove such actions. If disapproved of, the disapproved action would be deemed null and void. This proposed language is in compliance with the Act.

Record evidence indicates that § 986.57, Funds and other property, is necessary in order to clarify that any assessment funds, or otherwise contributed funds under the control of the Council, shall be used solely for the purposes of activities provided for under the proposed marketing order for pecans. To ensure that funds are properly administered, the Secretary may require the Council and its members to account for all receipts and disbursements.

Further, upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in their possession belonging to the Council must be delivered to their successor in office or to the Council. If necessary, actions may be taken to ensure that any successor or the Council regain full title to all the books, records, funds, and other property in the possession of the former member or employee.

Material Issue Number 5(c)—Expenses and Assessments

The Council should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to USDA in advance of each fiscal period to provide for USDA's review and approval. The budget should also include a recommendation to USDA of rates of assessment designed to secure income required for such fiscal year.

The Council should be authorized under § 986.60 of the proposed order to incur such expenses as the Department finds are reasonable and likely to be incurred during each fiscal or production year. Such a provision is necessary to assure the maintenance and functioning of the Council and to enable the Council to perform its duties in accordance with the provisions of the order. USDA is recommending a clarifying change to the proposed order language that was published in the Notice of Hearing. USDA recommends adding a statement that specifies that any budget proposed by the Council would be subject to USDA approval. This clarifying change has been incorporated into the proposed regulatory text of this Recommended Decision.

The record states that funds to cover the Council's expenses would be obtained through the collection of

assessments from handlers who handle pecans in the proposed production area. These assessments are intended to reflect each handler's proportional share of the Council's expenses. As such, assessments would be based on the total amount of pecans processed by each handler relative to the total amount of pecans processed by the industry as a whole during a given production year.

Witnesses explained that it would be appropriate to apply assessment calculations to the handler who first handles a particular lot of pecans. By assessing the handler who initially receives a lot of pecans, the industry intends to prevent having assessments paid more than once for the same pecans. However, witnesses also explained that since pecans are often transferred between handlers for further preparation or packaging for market, an inter-handler transfer may apply.

If an inter-handler transfer were to occur, the receiving second handler may assume the responsibility of paying the assessment. In cases of inter-handler transfers, the transaction and the assumption of the assessment responsibility by the second handler would be documented with the Council.

For the purposes of separating each fiscal year's harvest, witnesses explained the importance of handler inventory reporting at the close of each season. According to the record, August 31 would be an appropriate day for such reporting to occur. This information would indicate how much of the crop was still being warehoused by handlers, thereby also giving an indication of how much of the previous year's crop was being carried into the new fiscal year.

In addition, witnesses explained that on August 31 of each year, every handler warehousing inshell pecans would be identified as the first handler of those pecans and would be required to pay the then effective assessment rate on the category of pecans in their possession on that date. According to the record, this would allow the Council to collect all assessments on assessable pecans within the same year in which they are grown and harvested.

With regard to pecan inventories warehoused by growers, witnesses explained that after August 31, those inventories would cease to be eligible for inter-handler transfer after initial receipt by a handler. Instead, such inventory would require that the first handler of the warehoused inventory pay the assessment thereon. The assessment rate that would be applied would be the prevailing assessment rates at the time of receipt of the warehoused inventory from the grower to the said handler.

The loss of inter-handler transfer transaction authority would only be applicable to pecans warehoused by growers after August 31 of the year in which they were harvested. Witnesses explained that this provision would again allow the Council to track crop flow from one year to the next, thereby providing more accurate data on carry-in volume in the market. According to the record, this information would be helpful in better understanding the flow of product in the market and the potential impact of carry-in inventory on the total available supply.

Proposed § 986.62 describes the provisions of inter-handler transfers. The first sentence of this section states the exception of transfers not being available to handlers receiving product from growers after August 31, as described in proposed § 986.61(i). Witnesses testifying to inter-handler transfers explained that the exception to inter-handler transfers should also include § 986.61(h), which states that the transfer of assessment responsibility for handler warehousing unassessed pecans could not be transferred. On August 31, the handler in possession of the unassessed inventory would be required to pay the assessment due. As such, the Board proposed, as a clarifying change, to include a reference to § 986.61(h) alongside the reference to § 986.61(i) in the first sentence of § 986.62. This change has been incorporated into the proposed regulatory text of this Recommended Decision.

Witnesses acknowledged that the proposals to report, assess, and limit inter-handler transfers of product warehoused by growers and handlers after August 31 would require additional recordkeeping on the part of both handlers and the Council. However, the recordkeeping requirement was not considered burdensome in light of the benefit of accurate carryover data and timely assessment collection. Witnesses also explained that the Council would have the authority to recommend guidelines to implement this provision and that such recommendations would be subject to USDA approval.

Testimony in support of proposed § 986.60 covering Council expenses indicates that prior to the beginning of each production year, and as may be necessary thereafter, the Council should prepare an estimated budget of expenses necessary for its effective administration of the order. Based upon this estimate, the Council would calculate and recommend to the Department rates of assessment that would provide adequate funds to cover the cost of projected expenditures. Preparing a budget for the Council prior to the beginning of each fiscal period is reasonable. A budget is necessary to provide the Council and the Department with a basis for determining the rates of assessment necessary to administer the order.

The Council would present its annual budget to USDA for review and approval. Accompanying the budget would be a report showing the basis for its calculations, an explanation of each line item, and any proposed year-over-year increases or decreases. Assessments would be levied at the rates established by USDA. Establishment of such assessment rates would be accomplished through the informal rulemaking process. Such rates would be established on the basis of the Council's recommendations or other available information.

Witnesses stated that any assessment rate recommended to the Department for native pecans should be limited to a maximum rate of two cents and a minimum of one cent per pound. Similarly, any assessment rate recommended to the Department for improved pecans should be limited to a maximum of three cents and a minimum of two cents per pound. The assessment rate recommended for substandard pecans should be between a maximum of two cents and a minimum of one cent per pound.

The intent of the maximum limit on the assessment rates is to assure pecan growers and handlers that program expenses would be kept within specified limits. The proposed limit appears reasonable for the administration of a program of this nature.

Witnesses also stated that the proposed limits may cease to be appropriate given the potential for future changes in the industry. For this reason, the proposed program also includes a provision that would allow the proposed Council to consider other assessment thresholds. Such a consideration could only be made after the current proposed assessment ranges are in effect for the initial four years of the order.

Moreover, witnesses explained that any subsequent assessment rates could not exceed two percent of the aggregate average of all grower prices in each classification across the production area based on Council or USDA data. According to the record, the aggregate grower price average would be calculated for each classification for the preceding fiscal year. The recommended assessment rate for each respective classification could not exceed two

percent and would be approved by the Secretary.

Witnesses reasoned that there could be times during a fiscal year when it would become necessary to revise the budget and/or increase an assessment rate. Such instances could include situations where actual harvest is lower than anticipated or the Council incurs unforeseen expenses. In this regard, witnesses stated that an assessment rate should not be increased without the Council first making a recommendation and securing approval of the Department to do so. Such recommendation would also need to be made prior to the issuance of that production year's final handler assessment bill. Any assessment increase would be applicable to all pecans received and processed by handlers within the proposed production area for that production year and within the limits specified in § 986.61.

In the event the order is promulgated, witnesses also discussed the potential need for administrative funds to cover expenses before sufficient operating income is available from assessments. In this case, witnesses stated that the Council should be able to accept the payment of assessments in advance. In addition, it was explained that the Council should also have the authority to borrow money for such purposes, provided that the recommendation to do so received a unanimous vote of the Council. Moreover, witnesses stated that financial prudence was important and that any loan secured by the Council could not exceed 50 percent of assessment revenue projected for the year in which the loan is secured and that the loan must be repaid within five years.

Record evidence in support of proposed § 986.61 indicates that if assessments are not paid within the time prescribed by the Council, the Council may apply a late payment fee and charge interest on the unpaid balance. Late payment charges and interest on unpaid balances are reasonable in encouraging timely payment of assessments and compensating the Council for expenses incurred in collecting unpaid assessments.

While supporters of this proposal indicated that any assessments imposed under the program would be quite modest, timely collection of those assessments would be important in order to efficiently and effectively administer the provisions of the proposed program. Moreover, they indicated that if one handler were to become delinquent in paying his or her assessments, this could serve as an incentive for others to also become delinquent. Witnesses felt that the proposed late payment and interest charges would help to ensure stability in the flow of Council funds collected through assessments.

Under the proposed § 986.63 of the order, the Council would be allowed to accept voluntary contributions. Such contributions could only be accepted if they are free from any encumbrances or restrictions on their use from the donor. Witnesses explained that the Council would retain control over the use of contributions and their allocation towards budgetary needs. Witnesses also explained that the Council should have the authority to receive contributions from both within and outside of the production area.

The Council may accept contributions, for example, to fund the operations of the order during the first part of a production year, before sufficient income is available from assessments on the current year's pecans. Another example offered by witnesses was the use of contributed funds to support research projects, either nutritional or production related.

Proposed § 986.64, Accounting, is necessary to assure handlers and the industry that funds would only be used for the purposes intended, that there would be a proper disposition of excess funds, and that a detailed accounting would be made of such disposition. Under the order, the Council would only be authorized to incur such expenses as USDA finds are reasonable and likely to be incurred by it during each production year for its maintenance and functioning and for such other purposes as the Department may determine to be appropriate.

Paragraph (a)(2) of proposed § 986.64 provides for situations where, at the end of the fiscal year, the assessments collected may be in excess of expenses incurred. According to record evidence, the provisions under this section would allow the Council, with the approval of the Department, to establish an operating monetary reserve. This would allow the Council to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately three fiscal years' expenses. If reserve funds do exceed that amount, the assessment rates should be reduced to bring the reserves within the maximum level authorized under the order. These reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses; to cover deficits incurred during any fiscal year when assessment income is less than expenses; to defray expenses incurred during any period when any or all provisions of the order were suspended or inoperative; and to cover necessary expenses of liquidation in the event of termination of the order.

If any excess funds were not retained in a reserve, each handler who paid assessments would be entitled to a proportionate refund of the excess assessments collected. If excess assessments remained at the end of a given production year, the Council could apply each handler's excess as a credit for handlers towards the next production year's operating costs, or the Council could refund such funds to the handlers.

Testimony states that all funds received by the Council pursuant to the provisions of the proposed order would be used solely for the purposes specified in the order. Moreover, § 986.64 would authorize the Department at any time to require the Council and its members to account for all receipts, disbursements, funds, property or records for which they are responsible. This authority is necessary to ensure that proper accounting procedures are followed at all times.

Whenever any person ceases to be a member of the Council, that individual should be required to account for all receipts and disbursements for which he or she was responsible. That person should also be required to deliver all property and funds in such person's possession to the Council. Finally, that person would execute such assignments and other instruments as might be necessary or appropriate to vest in the Council full title of all Council property and funds.

In the event the proposed order were to be terminated or become inoperative, the Council, with the approval of USDA, would appoint one or more trustees for holding records, funds or other property of the Council. Any funds not required to defray the necessary expenses of liquidation would be returned, to the extent practicable, pro rata to the handlers from whom such funds were collected. Distribution of those funds would be carried out in a way that the Department deems appropriate.

Marketing Policy

Proposed § 986.65 would require that the Council prepare and submit to USDA, prior to the end of each fiscal year, an annual marketing policy. The marketing policy would serve as the basis for proposed marketing and promotion activities, as well as any proposed or modified handling regulation for the coming year. It would

also serve as a tool to identify the level of assessment rates needed to fund those activities.

Record evidence explained that in developing its marketing policy, the Council should consider production, harvesting, processing and storage conditions, as well as current and prospective prices. Witnesses identified the following specific factors to be considered. Where applicable, these quantities would be calculated on an inshell basis.

(1) Estimate of the grower-cleaned production and handler-cleaned production in the area of production for the fiscal year;

(2) Estimate of disappearance;

(3) Estimate of the improved, native, and substandard pecans;

(4) Estimate of the handler inventory on August 31, of inshell and shelled pecans;

(5) Estimate of unassessed inventory;

(6) Estimate of the trade supply, taking into consideration trade inventory, imports, and other factors;

(7) Preferable handler inventory of inshell and shelled pecans on August 31 of the following year;

(8) Projected prices in the new fiscal year;

(9) Competing nut supplies; and

(10) Any other relevant factors.

Witnesses explained that the above-outlined factors were important in any analysis of both the current and anticipated state of production, supply and demand. Both the analysis and the correlating recommendations for regulation, as provided for under proposed § 986.67, would need to be approved by at least two-thirds of the Council prior to presenting them to USDA.

Witnesses also noted that the term ''trade inventory'' included in § 986.65(f) was unclear as the term is not otherwise defined or used in the language of the proposed order. As such, the Board recommended the removal of that term from § 986.65(f). This change has been incorporated into the proposed language of this Recommended Decision.

Material Issue Number 5(d)—The Authority To Conduct Research and Promotion Activities

Record evidence indicates that the proposed order should include authority for the Council to recommend research and promotion activities. The provision for this authority is provided in proposed § 986.68.

As discussed in Material Issue 2, the need for research and promotion funding is viewed as essential by witnesses to the future success of the pecan industry. Witnesses from across the proposed production area testified in support of this authority.

As mentioned previously, there are several grower and sheller organizations throughout the proposed production area. These organizations currently conduct or fund research and promotion activities related to pecans on a limited basis within their own geographic areas and with limited budget, according to record evidence.

Research activities are currently conducted as funding is available by the independent organizations mentioned above, with little coordination among projects. Certain states, such as Georgia, Texas and New Mexico, also benefit from research conducted by State agricultural extension staff that assist growers with agricultural practices.

Several witnesses speaking directly to the benefits of research stated that funding was needed to support disease and pest control studies. In the Eastern and Central Regions, where the growing climate is relatively more humid than in the West, Pecan scab, a fungal plant pathogen, regularly leads to loss of supply and quality if not aggressively treated.

Similarly, significant insect management is required to address damage caused by Phyllo era, Pecan Nut Case bearer, Aphids (black and yellow), Nut Curculio, Hickory Shuck worm, Scorch Mites and Pecan Weevils. The cost of disease and pest management can vary significantly depending on seasonal rainfall. One witness stated that, in a typical year with average rainfall, spraying for disease and pests can occur 10 times per orchard. In years of higher rainfall, spraying can increase up to 16 times per orchard. The additional spraying increases the cost of production by roughly $150 per acre.

Witnesses concluded that the development of scab-resistant varieties, or more effective pest control methods, could lead to both meaningful savings in the cost of production, as well as greater supply and quality of nuts from trees impacted by these challenges.

Another form of research important to witnesses was that of nutritional benefits of pecans. Several witnesses cited current studies linking health benefits to nut consumption. However, due to lack of consistent funding, nutritional research on pecans specifically has lagged behind other nuts, such as almonds and walnuts. Proponents of the order were confident that nutritional research of pecans would yield results that would greatly impact consumer demand for the product. Through the promulgation of the proposed order, both the financial resources to fund such research and publicize the results would be available. According to these witnesses, an economic impact study on the potential effects of nutritional research and promotion on consumer demand for pecans would also be realized from implementation of this authority as part of the proposed program.

Record evidence also indicates that, with coordinated market research and promotion activities, U.S. consumer demand for pecans could be positively impacted. As previously discussed in Material Issue 2, U.S. consumer demand for pecans has remained relatively flat for the past twenty years. Comparatively, demand for other nuts, such as almonds, walnuts and pistachios, have steadily increased. Witnesses also testified that consumer awareness of pecans in markets outside of the proposed production area was limited to the seasonal consumption of pecans during the winter holiday season. An active marketing campaign designed to educate U.S. consumers on the taste and uses of pecans could result in an increase in domestic demand for the nut. For these reasons, witnesses stated that the authority for research and promotion should include market research and development, and marketing promotion, including paid generic advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of pecans.

Witnesses also stated that research is needed to develop better packaging for pecans. According to the record, pecans need to be stored in air-tight packaging to prevent rancidity. Exposure to light and variations in temperature can also contribute to rancidity in pecans. The authority to develop packaging that could prolong the freshness and shelf-life of pecans would enhance the overall quality of the product received by consumers, thereby positively contributing to consumer perception and demand of the product. Witnesses also explained that, ideally, pecans should be displayed in grocery store coolers where lower temperatures stabilize the nut's oil and prolong freshness. These witnesses cited the importance of educating merchants and consumers on proper storage techniques for pecans in order to enhance the quality and consumer experience with the product. The proposed research and promotion authority would support packaging and product placement research as well as market education.

As with other provisions proposed under the order, witnesses explained that the proposed Council should have authority to make recommendations,

subject to the approval of USDA, for the establishment of the above-described programs and activities, including preparing a budget, hiring staff, and implementing procedures for their administration.

Record evidence shows that the proposed Council should have the authority to conduct production research, marketing research and development projects, and marketing promotion, including paid generic advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of pecans, including product development, nutritional research, and container development. Furthermore, the expenses of such projects should be paid from assessment funds collected pursuant to the proposed program or contributions.

Material Issue Number 5(e)—The Authority To Regulate Grade, Size, Pack and Container

According to record evidence, the proposed order should include the authority to regulate quality, including grade and size, as well as pack and container requirements. In addition, the proposed order should provide for the establishment of inspection and certification requirements. Provisions allowing for exemption from handling regulation under special circumstances should also be established, along with the authority to establish safeguards necessary to ensure compliance with handling regulation or exemption therefrom under specified circumstances. Lastly, the USDA and the proposed Council should be required to give prompt notice of any handling regulation in effect under the proposed order so that handlers may be in compliance. These provisions are captured under the proposed §§ 986.69 through 986.72.

According to the record, U.S. grade standards are currently the only official guidelines established for pecans. These include ''United States Standards for Grades of Pecans in the Shell'' (1976) and ''United States Standards for Grades of Shelled Pecans'' (1969). These regulations are voluntary in that they apply only to handlers who choose to request inspection and certification.

The proposed handling regulation authority would authorize the proposed Council to recommend grade, quality and size requirements, subject to USDA review and approval. If such regulation were put in effect, they would become mandatory. As such, this authority would also include the proposed Council's ability to recommend inspection and certification for pecans handled within the proposed production area. The inspection and certification requirements would also be subject to USDA review and approval prior to becoming effective.

According to the record, because of the differences in native and improved pecans, it may be necessary to develop quality requirements that are specific to each classification of pecan. Witnesses explained that, on average, pecans from native trees are smaller than those from improved trees. The nut yield between classifications often differs as well. For this reason, size regulation applicable to improved pecans may not be applicable to native pecans, and vice versa.

Given that the current proposal would only provide the proposed Council with authority to recommend grade, quality, size, pack and container regulation, flexibility in the applicability of those potential regulation should exist. According to the proposal, handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof, could be recommended for any or all varieties of pecans and for any duration of time or period. Furthermore, the proposed language states that different handling requirements or minimum tolerances for particular grades, sizes, or qualities could also be considered for different containers, for different portions of the production area, or any combination thereof could also be considered.

Witnesses stated that in the development of future handling regulation, the Council should be able to recommend regulation that is specific to either Native or Improved pecans. The proposed definition of pecans, § 986.28, delineates these pecans into two classifications. In order to maintain consistency in terminology and to clarify that regulation could be recommended for individual or groups of varieties as well as classifications, the Board proposed a clarifying change. The Board proposed inserting the words ''and classifications'' after the word ''varieties'' in both paragraphs (a)(1) and (2) of § 986.69. This change has been incorporated into the proposed regulatory text of this Recommended Decision.

While witnesses did not provide examples for all of the proposed scenarios in which the above-outlined regulatory needs might exist, they did explain that flexibility would be needed in order for future Councils to develop regulation that is applicable to the specific demands of the pecan industry and its customers. For this reason, the proposed authority encompasses a wide range of factors that could apply to future regulatory situations.

Along with the authority to recommend handling regulation, witnesses stated that the proposed Council should have the authority to recommend pack and container regulation. This type of authority could be used to establish size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of pecans. Witnesses explained that this authority would be important in the context of new packaging that may be developed as a result of product development authorized under the proposed research and promotion authority.

Other witnesses explained that pack and container regulation could help to standardize transactions between pecan handlers and customers. If a standard container size were used by all handlers, for example, customers would be better able to compare market prices between handlers than if each handler quoted prices based on different size containers. Standardization could lead to greater transparency in the market, thereby also resulting in less price volatility.

While record evidence is that handling regulation, including pack and container regulation, could benefit the pecan industry, witnesses also explained that authority to amend, modify, suspend, or terminate such regulation would be equally important. If handling regulation ceases to be applicable or produce their intended benefits, the proposed Council should have the authority to effectuate change. Such change would be recommended by the proposed Council and be subject to review and approval of USDA.

The proposed language for § 986.69(b)(1) does not include the stipulation that any such amendment, modification, suspension or termination recommended by the Council would be subject to approval by USDA. In order to maintain consistency within the proposed language and its conformity with § 986.56, Right of the Secretary, the Board recommended a clarifying change. The clarifying change inserts the phrase ''and approval by the Secretary'' after the word ''Council'' in § 986.56(b)(1). This change has been incorporated into the proposed language of this Recommended Decision.

According to the record, the proposed authority to regulate handling as outlined in this Material Issue should not in any way constitute authority for the proposed Council to recommend volume regulation, such as reserve pools, producer allotments, or handler withholding requirements which limit

the flow of product to market for the purpose of reducing market supply. Proponents of the proposed order explained that the subject of volume regulation had been thoroughly discussed with industry participants throughout the proposed production area, and there was near-unanimous opposition to its inclusion in the proposed order. In order to clarify that volume regulation would not be considered in the future operation of the proposed order, the proponents proposed specific language found in proposed § 986.69(c).

Witnesses further explained that authority should exist for exempting the handling of pecans for special purposes. One of these purposes includes facilitating the delivery of pecans for relief or charity causes. Witnesses explained that if the opportunity were to arise for the industry to provide pecans for charitable purposes, their handling should be free from handling regulation, including assessments.

Similarly, witnesses explained that pecans being used for product development or research should also be exempted from any handling regulation that may be in effect, including assessments.

In order to ensure that handling for special purpose exemptions are used for their intended purposes, the proposed Council should have the authority to recommend rules and requirements necessary to oversee such shipments or usages.

In all cases of handling regulation, record evidence is that the USDA and the proposed Council should be required to give prompt notice of any handling regulation in effect under the proposed order so that handlers may be in compliance.

Material Issue Number 5(f)—Reporting and Recordkeeping

The record evidence indicates that the Council should have the authority, with USDA approval, to require handlers to submit such reports and information as the Council may need to perform its functions and fulfill its responsibilities under the order. The Council would need to collect information for such purposes as collecting assessments, compiling statistical data for use in market evaluation, and determining whether handlers are complying with order requirements. The types of information that could be collected to fulfill these reporting needs include, but are not limited to: Production, sales and inventory data, and information pertaining to transfers of pecans between handlers.

Proposed §§ 986.75 through 986.77 outline the types of reports identified by witnesses as being important to the functioning of the Council. The first of these reports would provide handler inventory of inshell and shelled pecans. It is proposed that the Council could prescribe the date ranges and frequency of this report as may be necessary to conduct administrative operations. Similarly, the volume of merchantable pecans, or those pecans meeting any handling regulation in effect under the proposed order, should be reported for both inshell and shelled, on a frequency to be determined by the Council. Reports of handler receipts of inshell or shelled pecans from growers, handlers or others should also be collected per the proposed Council's need for that data. Lastly, the proposed Council should also have the authority to recommend any other type of handler report that may become necessary to carry out the administrative activities of the program. In all cases, the proposed Council should have the authority to recommend the forms and filing requirements needed for the above-outlined data collection.

Additionally, under proposed §§ 986.79 through 986.82, record evidence is that each handler should be required to maintain records with respect to pecans acquired and handled as would be necessary to verify the reports that the handler submits to the Council. All such records would be required to be maintained for at least three fiscal years after the end of the fiscal year in which the transaction occurred.

Witnesses also stated that the order should provide the authority for USDA and authorized employees of the Council to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the proposed order. Such access should be available at any time during reasonable business hours. Furthermore, each handler should be required to furnish all labor necessary to facilitate such inspections at no expense to the Council or the Secretary. The proposed verification authority is necessary in order for the Council to be able to certify to USDA the completeness and correctness of the information obtained from handlers.

All reports and records submitted to the Council by handlers would be required to remain confidential and be disclosed only as authorized by USDA in accordance with the Act. However, the Council would be authorized to release composite information from any or all reports. Such composite information could not disclose the identity of the persons furnishing the information or any person's individual operation.

The record shows that industry handlers already collect and maintain some of the information contemplated to be reported and retained under the proposed order provisions. Thus, compliance with the provisions of the order with regard to reporting and recordkeeping would entail minimal handler costs.

Material Issue Number 5(g)—Compliance

No handler should be permitted to handle pecans except in conformity with the provisions of the order, as set forth in proposed § 986.87.

Witnesses stated that if the program is to be effective, compliance with its requirements is essential. Compliance with the mandatory provisions of the proposed order, if implemented, would provide assurance to industry participants that all handlers are subject to the same requirements. This requirement would, in effect, ''level-the-playing-field,'' witnesses explained. By mandating that all handlers contribute assessments on a per-pound basis, the assessment contribution is relative to the amount handled, meaning smaller handler businesses pay relatively smaller assessment amounts than larger handler businesses.

Similarly, if grade requirements were implemented, all pecans entering the market would have the same minimum quality. Witnesses explained that mandatory grade requirements, if implemented, would prevent the introduction of poorer quality product into the market, thereby lowering the consumer's expectations for quality pecans and depressing prices. Compliance would be necessary to ensure that mandatory requirements are being followed.

Proponents of the proposed order explained that, if promulgated, the Council would have the responsibility of identifying and hiring a staff to administer the day-to-day operations of the program. One of these activities would be program compliance and would require the hiring of a compliance officer or staff. The compliance activities of this staff would include receiving and reviewing handler reports submitted to the Council, conducting on-site reviews of handler records, and facilitating assessment collections. Witnesses also explained that while the day-to-day compliance operations were to be assumed by the proposed Council, elevated cases of non-compliance would be reported to

the USDA for further review and oversight.

Material Issue Number 5(h)—Exemption for Small Quantities

Proposed § 986.86, Exemption, states that any handler who handles 1,000 pounds of inshell pecans or less, or 500 pounds of shelled pecans or less, during any fiscal year may handle pecans free of the regulatory and assessment provisions of the proposed order. As discussed earlier in this Recommended Decision, costs associated with operating a commercial handling facility are significant. Record evidence indicates that an individual would need to handle a minimum of one million pounds of inshell pecans in order to be commercially viable. Growers who engage in handling activities may own some equipment necessary to prepare pecans for market, but also frequently use contract handlers. Again, for these entities to be commercially viable, the volume handled would need to be much larger in order for the revenue generated to exceed the costs. The record shows that the purpose of this provision is to provide an exemption from the proposed requirements of the order for small quantities of pecans, such as those that are grown for home or personal use.

An exception to the proposed exemption would be handlers engaged in mail order sales. Mail order sales would not be exempt. Mail order sales would be subject to any regulatory or assessment provisions in effect under the proposed order. Witnesses explained that the mail order business, also sometimes referred to as the ''fundraising business,'' should be regulated as these sales represent a significant portion of seasonal sales in parts of the Eastern and Central Regions. ''Fundraising'' refers to sales of pecans to organizations that then resell the nuts as part of a fundraising activity. Moreover, witnesses explained that mail order and fundraising sales entail a more sophisticated business engagement than a small handler selling pecans at a roadside stand. For these reasons, the proposed exemption should not be applied to mail order sales, including fundraising sales.

Additionally, implementing rules and regulation may be deemed necessary to ensure that handlers claiming this minimum exemption are not selling pecans in domestic human consumption outlets that are not in compliance with the minimum quality requirements of the order. Such rules and regulation could be implemented under the authority in proposed § 986.86 of the order.

Material Issue Number 5(i)—Continuance Referenda, Amendments and Termination

In accordance with proposed § 986.94(d), the order should provide that the Department conduct periodic continuance referenda every 5 years. The initial continuance referendum should be conducted within 5 years of the effective date of the marketing order.

Witnesses stated that the proposed continuance referendum requirement would be an important component of the proposed order. Many witnesses indicated that this provision would provide assurance that, if the industry determined that the program was not fulfilling its intended purpose, the program could be terminated.

The Act provides that in the promulgation of a marketing order, at least two-thirds of the growers voting in the referendum, or two-thirds of the volume represented by those grower, must favor the issuance of the order. It is also the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to growers, obligate growers to evaluate their programs periodically, and involve them more closely in their operation. The record supports these goals.

Witnesses explained that the same measure of support used in promulgation should also be used in the five-year periodic review of the order; at least two-thirds of growers voting would need to vote in favor of continuance. Witnesses also stated that prior to a continuance referendum, the Secretary would need to identify an appropriate period of time for which producers would report their production. Given that a continuance referendum measures votes cast in term of both number of eligible growers voting and the volume that each said grower produced, a production period needs to be identified.

Section 986.94 of the proposed language as published in the Notice of Hearing indicated that the period of production in question should be the ''representative period'' as defined in § 986.34 of the proposed language in this Recommended Decision. However, at the hearing, witnesses indicated that the four fiscal years identified in the definition may be too long of a time period. As such, the Board recommended modifying the proposed language in § 986.94(d) to state that the period of time used to determine grower production volume should be determined by the Secretary. Moreover, according to the brief filed on behalf of the Board, this modification would also recognize the power of the Secretary to determine the preferred period of time for grower eligibility in continuance and termination referenda. Therefore, the words ''representative period'' in second sentence in paragraph (d) of this section should be changed to ''an appropriate period of time.'' This change has been incorporated into the proposed regulatory text of this Recommended Decision. A similar conforming change has been made to proposed § 986.97, Counterparts.

Section 608(C)(16)(B) of the Act also requires the Department to terminate the order whenever the Department finds that the majority of all growers favor termination, and that such majority produced more than 50 percent of the commodity for market. This provision is provided for in proposed § 986.95.

According to the record, if the order were terminated, the then-serving Council members would continue serving as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered at the time of such termination. The joint trustees would continue to serve in their capacity as such until discharged from their duties by the Secretary.

The process of liquidating the order would require that these trustees account for all receipts and disbursements of program funds, and deliver all funds, program property, and books and records to the Secretary. Program funds would be used to meet any outstanding obligations and expenses of the program. Any remaining funds would be returned to industry handlers in a pro rata proportion to their assessment contributions.

Lastly, the Secretary would have the authority to hold persons other than the Council members who may be holding program funds, property or claims, to the same obligations as the joint trustees.

Material Issue Number 5(j)—Common Terms

The provisions of proposed §§ 986.88 through 986.93 and §§ 986.97 through 986.99 are common to marketing agreements and orders now operating. All such provisions are necessary to effectuate the other provisions of the marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each provision. These provisions, which are applicable to both the marketing agreement and the marketing order, are identified by section number and heading as follows:

§ 986.88 Duration of immunities; § 986.89 Separability; § 986.90 Derogation; § 986.91 Liability; § 986.92 Agents; and § 986.93 Effective time. Those provisions applicable to the marketing agreement only are: § 986.97 Counterparts; § 986.98 Additional parties; and, § 986.99 Order with marketing agreement.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pecan order, are defined as those with annual receipts of less than $7,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pecan marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U.S. pecan industry.

Specific evidence on the number of large and small pecan farms (above and below the SBA threshold figure of $750,000 in annual sales) was not presented at the hearing. However, percentages can be estimated based on record evidence.

The 2014 season average grower prices per pound for improved and native seedling pecans were $2.12 and $0.88, respectively. A weighted grower price of $1.85 is computed by applying as weights the percentage split between improved and native acreage on a representative U.S. pecan farm, which are 78 and 22 percent, respectively. The average yield on the representative farm is 1,666.67 pounds per acre. Multiplying the $1.85 price by the average yield gives total revenue per acre figure of $3,080. Dividing the $750,000 SBA annual sales threshold figure by the revenue per acre figure of $3,080 gives an estimate of 243 acres as the size of farm that would have annual sales about equal to $750,000, given the previous assumptions. Any farm of that size or larger would qualify as a large farm under the SBA definition.

Data presented in the record show that about 52 percent of commercial U.S. pecan farms have 250 or more acres of pecans. Since the 243 acre estimate above is close to 250 acres, it can be extrapolated that 52 percent is a reasonable approximation of the proportion of large farms and 48 percent is the proportion of small pecan farms. According to the record, this estimate does not include ''backyard'' production.

According to record evidence, there are an estimated 250 handlers in the U.S. Of these handlers, which include accumulators, there are an estimated 50 commercially viable shellers with production over 1 million pounds of inshell pecans operating within the proposed production area. Fourteen of these shellers meet the SBA definition for large business entity and the remaining 36 are small business entities.

Record evidence indicates that implementing the proposed order would not represent a disproportionate burden on small businesses. An economic impact study of the proposed authority for generic promotion presented at the hearing provided that the proposed program would likely benefit all industry participants.

Impact of Generic Promotion Through a Marketing Order

The record shows that generic promotion over a wide variety of agricultural products stimulates product demand and translates into higher prices for growers than would have been the case without promotion.

Promotional impact studies of other tree nuts (almonds and walnuts), and of Texas pecans, show price increases as high as 6 percent, but the record indicates that 0 to 3 percent is a more representative range. Since the other tree nut promotion programs are well-established, the record shows that a representative middle (most likely) scenario would be a price increase from promotion of 1.5 percent for the early years of a new pecan promotion program. Low and high scenarios were 0.5 and 3.0 percent, respectively.

The record indicates that an analytical method used historical yearly prices from 1997 to 2014 in a simulation covering that period to obtain an expected average price without promotion. In a subsequent step, the simulation applied a demand increase of 1.5 percent to the entire distribution of prices to represent the impact of promotion. The projected increases in grower prices from promotion for improved and native pecans were 6.3 and 3.6 cents per pound, respectively, as shown in Table 4. These two price increase projections represent a range of results. Based on a range of simulated price increases as high as 3 percent, the low and high price increase projections for improved pecans were 4.0 and 9.6 cents, respectively. For native varieties, the results ranged from 2.7 to 4.2 cents.

The record indicates that a key analytical step was developing an example farm with specific characteristics to explain market characteristics and marketing order impacts. An important characteristic of this ''representative farm'' is the acreage allocation between improved and native pecans of 78 and 22 percent, respectively. This is similar to the proportion of the U.S. pecan crop in recent years allocated to improved and native varieties. Average yield per acre of the representative farm (covering all states and varieties) is 1,666.67 pounds per acre.

The acreage split of 78 and 22 percent are used as weights to compute weighted average prices (combining improved and native pecans) of 5.7 and 2.3 cents, respectively, as shown in the fourth column of Table 4.

The record shows that the proposed initial ranges of marketing order assessments per pound are 2 to 3 cents for improved pecan and 1 to 2 cents for native pecans. The midpoints of these ranges (2.5 and 1.5 cents, respectively) are used to compute a benefit-cost ratio from promotion, with a weighted average assessment cost of 2.3 cents, as shown in Table 5. Assessments would be collected from handlers, not growers, but for purposes of this analysis, it is assumed that 100 percent of the assessment cost would be passed through to growers.

Table 4 shows that dividing the projected benefit of 5.7 cents per pound (weighted price increase from promotion) by the estimated assessment cost of 2.3 cents (weighted assessment rate per pound), yields a benefit-cost ratio of 2.5. For each dollar spent on pecan promotion through a Federal marketing order, U.S. average grower price per pound is expected to increase by $2.50.

TABLE 4—ESTIMATED BENEFIT-COST RATIO OF PECAN PROMOTION THROUGH A FEDERAL MARKETING ORDER

	Improved pecans	Native pecans	Weighted
Benefit: Projected price increase from pecan promotion (cents per pound)	6.3	3.6	5.7
Cost: FMO Assessment rate (cents per pound)	2.5	1.5	2.3
Benefit-cost ratio	2.52	2.40	2.50

*Weights for improved and native pecans are 78% and 22%, respectively, which is the acreage allocation of a representative U.S. pecan farm, according to the record.

Examining potential costs and benefits from promotion across different farm sizes is done in Table 5. Record evidence showed that the minimum size of a commercial pecan farm is 30 acres, and that a representative average yield across the entire production area is 1,666.67 pounds per acre. This combination of acreage and yield results in a minimum threshold level of commercial production of 50,000 pounds. Witnesses stated that expenditures for the minimum necessary level of inputs for commercial pecan production cannot be justified for any operation smaller than this.

In Table 5, a very small farm is defined as being at the minimum commercial threshold level of 30 acres and 50,000 pounds. Small and large farms are represented by farm size levels of 175 and 500 acres, respectively. Multiplying those acreage levels by the average yield for the entire production area gives total annual production level estimates of 291,667 and 833,335 pounds, respectively.

Multiplying the 2014 grower price per pound of $2.14 by the 291,677 pounds of production from the small farm (175 acres) yields an annual crop value estimate of about $618,000. This computation shows that the small farm definition from the record is consistent with the SBA definition of a small farm (annual sales value of up to $750,000).

Table 5 shows for the three representative pecan farm sizes the allocation of total production levels between improved and native varieties (78 and 22 percent, respectively).

Although marketing order assessments are paid by handlers, not growers, it is nevertheless useful to estimate the impact on growers, based on the assumption that handers may pass part or all of the assessment cost onto growers from whom they purchase pecans. To compute the marketing order burden for each farm size, the improved and native production quantities are multiplied by 2.5 and 1.5 cents per pound of improved and native pecans, respectively. For the representative small farm (175 acres), summing the improved and native assessments yields a total annual assessment cost of $6,650. For the large farm, the total assessment cost is $19,000.

A parallel computation is made to obtain the total dollar benefit for each farm size. The improved and native quantities for the representative farm sizes are multiplied by the corresponding projected price increases of 6.3 and 3.6 cents. Summing the improved and native benefits for the small and large farm size yields projected annual total benefits for the small and large representative farm sizes of $16,643 and $47,550, respectively. The results of dividing the benefits for each farm size by the corresponding costs is 2.5, which equals the benefit-cost ratio shown in Table 5.

TABLE 5—COSTS AND BENEFITS OF PROMOTION FOR THREE SIZES OF REPRESENTATIVE U.S. PECAN FARMS

	Very small farm	Small farm	Large farm
Representative Pecan Farms: Acres and Production:			
Acres per farm	30	175	500
Production on Representative Farms (Acres multiplied by estimated U.S. average yield of 1666.67 pounds per acre)	50,000	291,667	833,335
Improved pecan production (78% of farm acres)	39,000	227,500	650,001
Native pecan production (22% of farm acres)	11,000	64,167	183,334
Cost per farm: Grower burden of proposed program represented as cost per pound.			
Improved (2.5 cents)	$975	$5,688	$16,250
Native (1.5 cents)	$165	$963	$2,750
Total Estimated Cost per Farm	$1,140	$6,650	$19,000
Benefit per farm: Price increase per pound from pecan promotion multiplied by improved and native production			
Improved (6.3 cents)	$2,457	$14,333	$40,950
Native (3.6 cents)	$396	$2,310	$6,600
Total Estimated Benefit per Farm	$2,853	$16,643	$47,550

The computations in Table 5 provide an illustration, based on evidence from the record, that there would be no disproportionate impact on smaller size farms from establishing a marketing order and implementing a promotion program. Costs are assessed per pound and thus represent an equal burden regardless of size. The projected benefits from promotion are realized through increases in price per pound and are thus distributed proportionally among different sizes of farms.

All of the grower and handler witnesses, both large and small, testified that the projected price increases from promotion of pecans (6.3 and 3.6 cents per pound for improved and native pecans, respectively) were reasonable estimates of the benefits from generic promotion of pecans. A number of them expressed the view that the price increase estimates were conservative and that, over time, the price impact would be larger.

As mentioned above, marketing order assessments are paid by handlers, not growers. However, since handlers may pass some or all of the assessment cost

onto growers, it is useful to provide this illustration of potential impact on both growers and handlers.

Using the most recent three years of prices as examples of typical U.S. annual grower prices, Table 6 summarizes evidence from the record that shows the proposed marketing order assessment rates as percentages of grower and handler prices received. Based on record evidence that a representative handler margin is 57.5 cents per pound, handler prices are estimated by summing the grower price and handler margin.

TABLE 6—PROPOSED MARKETING ORDER ASSESSMENT RATES AS A PERCENTAGE OF PRICES FOR PECANS RECEIVED BY GROWERS AND HANDLERS

	Grower and handler prices			Assessment rates ***	Assessment rates as a percent of prices received		
	2012	2013	2014		2012	2013	2014
Grower price *							
Improved	$1.73	$1.90	$2.12	$0.025	1.4%	1.3%	1.2%
Native	0.88	0.92	0.88	0.015	1.7	1.6	1.7
Handler price **							
Improved	2.31	2.48	2.70	0.025	1.08	1.01	0.93
Native	1.46	1.50	1.46	0.015	1.03	1.00	1.03

* Season average grower price per pound from NASS/USDA.
** Grower price plus average handler margin of 57.5 cents per pound, based on hearing evidence.
*** Midpoints of proposed initial marketing order assessment rates: Improved (2 to 3 cents); Native (1 to 2 cents). For growers this represents the cost of the marketing order burden and for handlers this represents the cost of the assessment paid.

For both improved and native pecans, using 2012 to 2014 prices as examples, Table 6 shows that the potential burden of the proposed program can be calculated at between 1 and 2 percent of operating expenses for growers and are approximately 1 percent of operating expenses for handlers. Grower and handler witnesses, both large and small, covering both improved and native pecans, testified that the proposed initial marketing order assessment rates would not represent a significant burden to their businesses and that the benefits of the proposed generic promotion program substantially outweigh the cost. Sheller witnesses (large and small) that would likely become handlers under a Federal marketing order testified that the additional recordkeeping required to collect assessments to send to the marketing order board (American Pecan Council) would not be a significant additional burden and that the benefits would substantially outweigh the costs. Several witnesses stated that one reason that collecting the assessments would have only a minor impact is that they already perform similar functions for promotion and other pecan-related programs (or other commodity programs) organized under state law.

Additional Marketing Order Programs

Statements of support for additional benefits that could come from a Federal marketing order came from grower and handler witnesses, both large and small, covering both improved and native pecans. The additional benefits cited included: (1) Additional and more accurate market information, including data on production, inventory, and total supplies, (2) funding of research on health and nutrition aspects of pecans, improved technology relating to the pecan supply chain and crop health, consumer trends, and other topics, and (3) uniform, industry-wide quality standards for pecans, as well as packaging standards and shipping protocols. Witnesses testified that the burden of funding and participating in marketing order programs with these features would be minor, and that the benefits would substantially outweigh the costs.

The proposed order would impose some reporting and recordkeeping requirements on handlers. However, testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the Council is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under other tree nut programs impose an average annual burden on each regulated handler of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this proposed marketing order on the estimated 250 handlers of pecans in the proposed production area.

The Act requires that, prior to the issuance of a marketing order, a referendum be conducted among the affected growers to determine if they favor issuance of the order. The ballot material that would be used in conducting the referendum would be submitted to and approved by OMB before it is used. It is estimated that it would take an average of 10 minutes for each grower to complete the ballot. Additionally, it has been estimated that it would take approximately 10 minutes for each handler to complete the marketing agreement.

Therefore, in compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB review. Any recordkeeping and reporting requirements imposed would be evaluated against the potential benefits to be derived, and it is expected that any added burden resulting from increased reporting and recordkeeping would not be significant when compared to those anticipated benefits derived from administration of the proposed order.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order proposed herein; namely, no marketing order.

In determining that the proposed order and its provisions would not have a disproportionate economic impact on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is

anticipated that the order will help to strengthen demand for pecans. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and growers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or growers.

A 30-day comment period is provided to allow interested persons to respond to this proposed decision to effectuate a marketing order. Thirty days is deemed appropriate so that any marketing order resulting from this rulemaking process may be implemented as soon as possible at the beginning of the nearest fiscal year. A 60-day comment period on the information collection burden is deemed appropriate as any paperwork burden imposed by this action will not become effective until the process is finalized. All written exceptions and comments timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the marketing order regulating pecans grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

Title: Pecans Grown in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

OMB Number: 0581—NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: Intent to establish a new information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the proposed pecan marketing order program.

The proposed pecan marketing order would authorize data collection, research and promotion authority, grade and size regulation, as well as pack and container regulation. AMS is the agency that would provide oversight of the order, and any administrative rules and regulations issued under the program.

The Department must determine if sufficient grower support exists within the industry to initially establish the proposed marketing order. If the order were established, the USDA could also, given recommendation by the Council and adequate support by the industry, implement formal rulemaking to amend the order. Further, a continuance referendum would be conducted every 5 years to determine ongoing industry support for the order. In all of these instances, ballot information would be collected from growers and compiled in aggregate for purposes of determining grower support for the order (or any amendment to the order).

Upon implementation of the order or during amendatory proceedings, handlers would be asked to sign a marketing agreement to indicate their willingness to comply with the provisions of the new or amended order. AMS would also provide a certificate of resolution for each handler organization to sign, documenting the handler's support of the marketing agreement and order.

If the proposed order is established, handler and grower nomination forms, ballots, and confidential qualification and acceptance statements will be used to nominate and appoint the Council members.

Pecan growers and handlers would be nominated by their peers to serve as representatives on the Council. Each grower and handler would have the opportunity to submit a nomination form with the names of individuals to be considered for nomination.

Individuals who are nominated and wish to stand for election would be required to complete a confidential qualification and acceptance statement before the election. If qualified, the nominees would be placed on a nomination ballot.

Growers and handlers would vote for the candidate(s) of their choice using the grower and handler nomination ballots. Names of candidates and their respective vote tallies would be submitted to AMS for selection and appointment as Council members and alternate members. The grower and handler members of the Council would nominate an at-large accumulator and an alternate accumulator member, as well as a public member and alternate public member. Each would complete qualification and acceptance statement before being recommended to AMS for appointment.

The forms covered under this information collection request submission of minimum information necessary to ascertain grower support for implementing the proposed order and to appoint initial Council members. Additional reporting and recordkeeping requirements may subsequently be recommended by the Council for its use in administering the order. The burden imposed by any additional requirements would be submitted for approval by the OMB.

The information collected would be used only by authorized representatives of USDA, including AMS, Specialty Crops Program regional and headquarters' staff, and authorized employees of the Council, if established. Section 608(d)(2) of the Act provides that all information would be kept confidential.

Total Annual Estimated Burden

The total burden for the proposed information collection under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12.5 minutes per response.

Estimated Number of Respondents: 1,789.

Estimated Number of Responses per Respondent: .77.

Estimated Total Annual Burden on Respondents: 469 hours.

Estimated Annual Burden for Each Form

For each new form, the proposed request for approval of new information collections under the order are as follows:

FV–313 Grower's Referendum Ballot (promulgation and continuance). Growers would use this ballot to vote whether they favor establishment of the order and, once every 5 years, whether they want the order to continue in effect. For the purpose of this calculation, it is estimated that 1,875 pecan growers (75 percent of the total) would vote in the promulgation referendum and in the continuance referenda.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan growers.

Estimated Number of Respondents: 1,875.

Estimated Number of Responses per Respondent: Once every 5 years.

Estimated Total Annual Burden on Respondents: 125 hours.

FV–242 Marketing Agreement. Handlers would use this form to indicate their willingness to comply with the provisions of the order. The marketing agreement would be completed if the proposed order is implemented and in any future amendment of the order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan handlers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: Once every 5 years.

Estimated Total Annual Burden on Respondents: .83 minute.

FV–242A Certificate of Resolution. This would document corporate handlers' support for the order and marketing agreement. The marketing agreement would be completed if the proposed order is implemented and in any future amendment of the order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Incorporated pecan handlers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: Once every 5 years.

Estimated Total Annual Burden on Respondents: .83 minute.

FV–311 and 312 Administrative Council for Pecans Confidential Grower/Sheller and Public Member Qualification and Acceptance Statement. There are 17 members and 17 alternate members on the Council. Each year after the initial Council is seated, half of the 34 members would be replaced with new members. This form would be used by candidates for nomination to provide their qualifications to serve on the Council. For the purpose of this calculation, it is estimated that 60 individuals will agree to be candidates to serve on the Council.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan growers, handlers and public member nominees.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.7 hours.

FV–308 Sheller Members and Alternate Sheller Members Ballot. Each sheller would use the ballot to vote on sheller member nominees to serve on the Council.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan handlers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 4.2 hours.

FV–309 Grower Members and Alternate Grower Members Nomination Form. Pecan growers would use this form to nominate themselves or other growers to serve on the Council. For the purpose of this calculation, it is estimated that 50 growers will offer nominations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan growers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 16.7 hours.

FV–310 Sheller Members and Alternate Sheller Members Nomination Form. Pecan shellers would use this form to nominate themselves or other shellers to serve on the Council. For the purpose of this calculation, it is estimated that 10 shellers will offer nominations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan handlers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.3 hours.

FV–307 Grower Member and Alternate Grower Member Ballot. Pecan growers would use this ballot to vote on their choice of nominees to serve on the Council. For the purpose of this calculation, it is estimated that 1,250 growers (50 percent of all growers) will vote in nomination elections.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas pecan growers.

Estimated Number of Respondents: 1,250.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 313 hours.

If this marketing order program is approved by growers in referendum and established by USDA, the Council could recommend to the Department other forms (such as monthly handler reports of acquisitions or dispositions of substandard pecans) which would be

needed to administer the order. All such forms would be subject to USDA and OMB review and approval.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581—NEW and the pecan marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval of the above-described forms. All comments will become a matter of public record.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

(1) The proposed marketing agreement and order and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of pecans in Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pecans grown in the production area; and

(5) All handling of pecans grown in the production area (Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Missouri, Mississippi, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas) as defined in the proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement.

List of Subjects in Proposed 7 CFR Part 986

Marketing agreements, Pecans, Reporting and recordkeeping requirements.

The Agricultural Marketing Service proposes to add 7 CFR part 986 to read as follows:

PART 986—PECANS GROWN IN THE STATES OF ALABAMA, ARKANAS, ARIZONA, CALIFORNIA, FLORIDA, GEORGIA, KANSAS, LOUISIANA, MISSOURI, MISSISSIPPI, NORTH CAROLINA, NEW MEXICO, OKLAHOMA, SOUTH CAROLINA, AND TEXAS

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Authority: 7 U.S.C. 601–674.

Definitions

§ 986.1 Accumulator.

Accumulator means a person who compiles inshell pecans from other persons for the purpose of resale or transfer.

§ 986.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

§ 986.3 Affiliation.

Affiliation. This term normally appears as ''affiliate of'' or ''affiliated with,'' and means a person such as a grower or sheller who is: A grower or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the grower or handler specified; or a grower or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified grower or handler with one or more other growers or handlers. As used in this part, the term ''control'' (including the terms ''controlling,'' ''controlled by,'' and ''under the common control with'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a grower, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 986.4 Blowouts.

Blowouts mean lightweight or underdeveloped inshell pecan nuts that are considered of lesser quality and market value.

§ 986.5 To certify.

To certify means the issuance of a certification of inspection of pecans by the inspection service.

§ 986.6 Confidential data or information.

Confidential data or information submitted to the Council consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 986.7 Container.

Container means a box, bag, crate, carton, package (including retail packaging), or any other type of receptacle Used in the packaging or handling of pecans.

§ 986.8 Council.

Council means the American Pecan Council established pursuant to § 986.45, American Pecan Council.

§ 986.9 Crack.

Crack means to break, crack, or otherwise compromise the outer shell of a pecan so as to expose the kernel inside to air outside the shell.

§ 986.10 Cracks.

Cracks refer to an accumulated group or container of pecans that have been cracked in harvesting or handling.

§ 986.11 Custom harvester.

Custom harvester means a person who harvests inshell pecans for a fee.

§ 986.12 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 986.13 Disappearance.

Disappearance means the difference between the sum of grower-cleaned production and handler-cleaned production (whether from improved orchards or native and seedling groves) and the sum of inshell and shelled merchantable pecans reported on an inshell weight basis.

§ 986.14 Farm Service Agency.

Farm Service Agency or FSA means that agency of the U.S. Department of Agriculture.

§ 986.15 Fiscal year.

Fiscal year means the twelve months from October 1 to September 30, both inclusive, or any other such period deemed appropriate by the Council and approved by the Secretary.

§ 986.16 Grade and size.

Grade and size means any of the officially established grades of pecans and any of the officially established sizes of pecans as set forth in the United States standards for inshell and shelled pecans or amendments thereto, or modifications thereof, or other variations of grade and size based thereon recommended by the Council and approved by the Secretary.

§ 986.17 Grower.

(a) *Grower* is synonymous with producer and means any person engaged within the production area in a proprietary capacity in the production of pecans if such person:

(1) Owns an orchard and harvests its pecans for sale (even if a custom harvester is used); or

(2) Is a lessee of a pecan orchard and has the right to sell the harvest (even if the lessee must remit a percentage of the crop or rent to a lessor).

(b) The term ''grower'' shall only include those who produce a minimum of 50,000 pounds of inshell pecans during a representative period (average of four years) or who own a minimum of 30 pecan acres according to the FSA, including acres calculated by the FSA based on pecan tree density. In the absence of any FSA delineation of pecan acreage, the regular definition of an acre will apply. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.18 Grower-cleaned production.

Grower-cleaned production means production harvested and processed through a cleaning plant to determine volumes of improved pecans, native and seedling pecans, and substandard pecans to transfer to a handler for sale.

§ 986.19 Handler.

Handler means any person who handles inshell or shelled pecans in any manner described in § 986.20.

§ 986.20 To handle.

To handle means to receive, shell, crack, accumulate, warehouse, roast, pack, sell, consign, transport, export, or ship (except as a common or contract carrier of pecans owned by another person), or in any other way to put inshell or shelled pecans into any and all markets in the stream of commerce either within the area of production or from such area to any point outside thereof. The term ''to handle'' shall not include: Sales and deliveries within the area of production by growers to handlers; grower warehousing; custom handling (except for selling, consigning or exporting) or other similar activities paid for on a fee-for-service basis by a grower who retains the ownership of the pecans; or transfers between handlers.

§ 986.21 Handler inventory.

Handler inventory means all pecans, shelled or inshell, as of any date and wherever located within the production area, then held by a handler for their account.

§ 986.22 Handler-cleaned production.

Handler-cleaned production is production that is received, purchased or consigned from the grower by a handler prior to processing through a cleaning plant, and then subsequently processed through a cleaning plant so as to determine volumes of improved pecans, native and seedling pecans, and substandard pecans.

§ 986.23 Hican.

Hican means a tree resulting from a cross between a pecan and some other type of hickory (members of the genus *Carya)* or the nut from such a hybrid tree.

§ 986.24 Inshell pecans.

Inshell pecans are nuts whose kernel is maintained inside the shell.

§ 986.25 Inspection Service.

Inspection service means the Federal-State Inspection Service or any other inspection service authorized by the Secretary.

§ 986.26 Inter-handler transfer.

Inter-handler transfer means the movement of inshell pecans from one handler to another inside the production area for the purposes of additional handling. Any assessments or requirements under this part with respect to inshell pecans so transferred may be assumed by the receiving handler.

§ 986.27 Merchantable pecans.

(a) *Inshell. Merchantable inshell* pecans mean all inshell pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

(b) *Shelled. Merchantable shelled* pecans means all shelled pecans meeting the minimum grade regulations that may be effective pursuant to § 986.69, Authorities regulating handling.

§ 986.28 Pack.

Pack means to clean, grade, or otherwise prepare pecans for market as inshell or shelled pecans.

§ 986.29 Pecans.

(a) *Pecans* means and includes any and all varieties or subvarieties of Genus: *Carya,* Species: *illinoensis,* expressed also as *Carya illinoinensis (syn. C. illinoenses)* including all varieties thereof, excluding hicans, that are produced in the production area and are classified as:

(1) *Native or seedling* pecans harvested from non-grafted or naturally propagated tree varieties;

(2) *Improved pecans* harvested from grafted tree varieties bred or selected for superior traits of nut size, ease of shelling, production characteristics, and resistance to certain insects and diseases, including but not limited to: Desirable, Elliot, Forkert, Sumner, Creek, Excel, Gracross, Gratex, Gloria Grande, Kiowa, Moreland, Sioux, Mahan, Mandan, Moneymaker, Morrill, Cunard, Zinner, Byrd, McMillan, Stuart, Pawnee, Eastern and Western Schley, Wichita, Success, Cape Fear, Choctaw, Cheyenne, Lakota, Kanza, Caddo, and Oconee; and

(3) *Substandard pecans* that are blowouts, cracks, stick-tights, and other inferior quality pecans, whether native or improved, that, with further handling, can be cleaned and eventually sold into the stream of commerce.

(b) The Council, with the approval of the Secretary, may recognize new or delete obsolete varieties or sub-varieties for each category.

§ 986.30 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 986.31 Production area.

Production area means the following fifteen pecan-producing states within the United States: Alabama, Arkansas, Arizona, California, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, North Carolina, New Mexico, Oklahoma, South Carolina, and Texas.

§ 986.32 Proprietary capacity.

Proprietary capacity means the capacity or interest of a grower or handler that, either directly or through one or more intermediaries or affiliates, is a property owner together with all the appurtenant rights of an owner, including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 986.33 Regions.

(a) *Regions* within the production area shall consist of the following:

(1) *Eastern Region,* consisting of: Alabama, Florida, Georgia, North Carolina, South Carolina

(2) *Central Region,* consisting of: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Texas

(3) *Western Region,* consisting of: Arizona, California, New Mexico

(b) With the approval of the Secretary, the boundaries of any region may be changed pursuant to § 986.58, Reapportionment and redefining of regions.

§ 986.34 Representative period.

Representative period is the previous four fiscal years for which a grower's annual average production is calculated, or any other period recommended by the Council and approved by the Secretary.

§ 986.35 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 986.36 Sheller.

Sheller refers to any person who converts inshell pecans to shelled pecans and sells the output in any and all markets in the stream of commerce, both within and outside of the production area; *Provided,* That the term ''sheller'' shall only include those who shell more than 1 million pounds of inshell pecans in a fiscal year. The Council may recommend changes to this definition subject to the approval of the Secretary.

§ 986.37 Shelled pecans.

Shelled pecans are pecans whose shells have been removed leaving only edible kernels, kernel pieces or pecan meal. *Shelled pecans* are synonymous with *pecan meats.*

§ 986.38 Stick-tights.

Stick-tights means pecans whose outer shuck has adhered to the shell causing their value to decrease or be discounted.

§ 986.39 Trade supply.

Trade supply means the quantity of merchantable inshell or shelled pecans that growers will supply to handlers during a fiscal year for sale in the United States and abroad or, in the absence of handler regulations § 986.69 setting forth minimum grade regulations for merchantable pecans, the sum of handler-cleaned and grower-cleaned production.

§ 986.40 Unassessed inventory.

Unassessed inventory means inshell pecans held by growers or handlers for which no assessment has been paid to the Council.

§ 986.41 Varieties.

Varieties mean and include all cultivars, classifications, or subdivisions of pecans.

§ 986.42 Warehousing.

Warehousing means to hold assessed or unassessed inventory.

§ 986.43 Weight.

Weight means pounds of inshell pecans, received by handler within each fiscal year; *Provided,* That for shelled pecans the actual weight shall be multiplied by two to obtain an inshell weight.

Administrative Body

§ 986.45 American Pecan Council.

The American Pecan Council is hereby established consisting of 17 members selected by the Secretary, each of whom shall have an alternate member nominated with the same qualifications as the member. The 17 members shall include nine (9) grower seats, six (6) sheller seats, and two (2) at-large seats allocated to one accumulator and one public member. The grower and sheller nominees and their alternates shall be growers and shellers at the time of their nomination and for the duration of their tenure. Grower and sheller members and their alternates shall be selected by the Secretary from nominees submitted by the Council. The two at-large seats shall be nominated by the Council and appointed by the Secretary.

(a) Each region shall be allocated the following member seats:

(1) *Eastern Region:* Three (3) growers and two (2) shellers;

(2) *Central Region:* Three (3) growers and two (2) shellers;

(3) *Western Region:* Three (3) growers and two (2) shellers.

(b) Within each region, the grower and sheller seats shall be defined as follows:

(1) *Grower seats:* Each region shall have a grower Seat 1 and Seat 2 allocated to growers whose acreage is equal to or exceeds 176 pecan acres. Each region shall also have a grower Seat 3 allocated to a grower whose acreage is less than 176 pecan acres.

(2) *Sheller seats:* Each region shall have a sheller Seat 1 allocated to a sheller who handles more than 12.5 million pounds of inshell pecans in the fiscal year preceding nomination, and a sheller Seat 2 allocated to a sheller who handles less than or equal to 12.5 million pounds of inshell pecans in the fiscal year preceding nomination.

(c) The Council may recommend, subject to the approval of the Secretary, revisions to the above requirements for grower and sheller seats to accommodate changes within the industry.

§ 986.46 Council nominations and voting.

Nomination of Council members and alternate members shall follow the procedure set forth in this section, or as may be changed as recommended by the Council and approved by the Secretary. All nominees must meet the requirements set forth in §§ 986.45, American Pecan Council, and 986.48, Eligibility, or as otherwise identified by the Secretary, to serve on the Council.

(a) *Initial members.* Nominations for initial Council members and alternate members shall be conducted by the Secretary by either holding meetings of shellers and growers, by mail, or by email, and shall be submitted on approved nomination forms. Eligibility to cast votes on nomination ballots, accounting of nomination ballot results, and identification of member and alternate nominees shall follow the procedures set forth in this section, or by any other criteria deemed necessary by the Secretary. The Secretary shall select and appoint the initial members and alternate members of the Council.

(b) *Successor members.* Subsequent nominations of Council members and alternate members shall be conducted as follows:

(1) *Call for nominations.* (i) Nominations for the grower member seats for each region shall be received from growers in that region on approved forms containing the information stipulated in this section.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall nominate in the region in which they grow the largest volume of their production.

(iii) Nominations for the sheller member seats for each region shall be received from shellers in that region on approved forms containing the information stipulated in this section.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall nominate in the region in which they shelled the largest volume in the preceding fiscal year.

(2) *Voting for nominees.* (i) Only growers, through duly authorized officers or employees of growers, if applicable, may participate in the nomination of grower member nominees and their alternates. Each grower shall be entitled to cast only one nomination ballot for each of the three grower seats in their region.

(ii) If a grower is engaged in producing pecans in more than one region, such grower shall cast their nomination ballot in the region in which they grow the largest volume of their production. Notwithstanding this stipulation, such grower may vote their volume produced in any or all of the three regions.

(iii) Only shellers, through duly authorized officers or employees of shellers, if applicable, may participate in the nomination of the sheller member nominees and their alternates. Each sheller shall be entitled to cast only one nomination ballot for each of the two sheller seats in their region.

(iv) If a sheller is engaged in handling in more than one region, such sheller shall cast their nomination ballot in the region in which they shelled the largest volume in the preceding fiscal year. Notwithstanding this stipulation, such sheller may vote their volume handled in all three regions.

(v) If a person is both a grower and a sheller of pecans, such person may not participate in both grower and sheller nominations. Such person must elect to participate either as a grower or a sheller.

(3) *Nomination procedure for grower seats.* (i) The Council shall mail to all growers who are on record with the Council within the respective regions a grower nomination ballot indicating the nominees for each of the three grower member seats, along with voting instructions. Growers may cast ballots on the proper ballot form either at meetings of growers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the proper forms with all required information, including signatures.

(ii) On the ballot, growers shall indicate their vote for the grower nominee candidates for the grower seats and also indicate their average annual volume of inshell pecan production for the preceding four fiscal years.

(iii) *Seat 1* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest volume of production (pounds of inshell pecans) votes from the respective region, and the grower receiving the second highest volume of production votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iv) *Seat 2* (growers with equal to or more than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from their respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(v) *Seat 3* (grower with less than 176 acres of pecans). The nominee for this seat in each region shall be the grower receiving the highest number of votes from the respective region, and the grower receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(4) *Nomination procedure for sheller seats.* (i) The Council shall mail to all shellers who are on record with the Council within the respective regions the sheller ballot indicating the nominees for each of the two sheller member seats in their respective regions, along with voting instructions. Shellers may cast ballots on approved ballot forms either at meetings of shellers, by mail, or by email as designated by the Council. For ballots to be considered, they must be submitted on the approved forms with all required information, including signatures.

(ii) *Seat 1* (shellers handling more than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(iii) *Seat 2* (shellers handling equal to or less than 12.5 million lbs. of inshell pecans in the preceding fiscal year). The nominee for this seat in each region shall be assigned to the sheller receiving the highest number of votes from the respective region, and the sheller receiving the second highest number of votes shall be the alternate member nominee for this seat. In case of a tie vote, the nominee shall be selected by a drawing.

(5) *Reports to the Secretary.* Nominations in the foregoing manner received by the Council shall be reported to the Secretary on or before 15 of each July of any year in which nominations are held, together with a certified summary of the results of the nominations and other information deemed by the Council to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the fifteen grower and sheller members of the Council and an alternate for each member, unless the Secretary rejects any nomination submitted. In the event the Secretary rejects a nomination, a second nomination process may be conducted to identify other nominee candidates, the resulting nominee information may be reported to the Secretary after July 15 and before September 15. If the Council fails to report nominations to the Secretary in the manner herein specified, the Secretary may select the members without nomination. If nominations for the public and accumulator at-large members are not submitted by September 15 of any year in which their nomination is due, the Secretary may select such members without nomination.

(6) *At-large members.* The grower and sheller members of the Council shall select one public member and one accumulator member and respective alternates for consideration, selection and appointment by the Secretary. The public member and alternate public member may not have any financial interest, individually or corporately, or affiliation with persons vested in the pecan industry. The accumulator member and alternate accumulator member must meet the criteria set forth in § 986.1, Accumulator, and may reside or maintain a place of business in any region.

(7) *Nomination forms.* The Council may distribute nomination forms at meetings, by mail, by email, or by any other form of distribution recommended by the Council and approved by the Secretary.

(i) *Grower nomination forms.* Each nomination form submitted by a grower shall include the following information:

(A) The name of the nominated grower;

(B) The name and signature of the nominating grower;

(C) Two additional names and respective signatures of growers in support of the nomination;

(D) Any other such information recommended by the Council and approved by the Secretary.

(ii) *Sheller nomination forms.* Each nomination form submitted by a sheller shall include the following:

(A) The name of the nominated sheller;

(B) The name and signature of the nominating sheller;

(C) One additional name and signature of a sheller in support of the nomination;

(D) Any other such information recommended by the Council and approved by the Secretary.

(8) *Changes to the nomination and voting procedures.* The Council may recommend, subject to the approval of the Secretary, a change to these procedures should the Council determine that a revision is necessary.

§ 986.47 Alternate members.

(a) Each member of the Council shall have an alternate member to be nominated in the same manner as the member.

(b) An alternate for a member of the Council shall act in the place and stead of such member in their absence or in the event of their death, removal, resignation, or disqualification, until the next nomination and elections take place for the Council or the vacancy has been filled pursuant to § 986.48, Eligibility.

(c) In the event any member of the Council and their alternate are both unable to attend a meeting of the Council, any alternate for any other member representing the same group as the absent member may serve in the place of the absent member.

§ 986.48 Eligibility.

(a) Each grower member and alternate shall be, at the time of selection and during the term of office, a grower or an officer, or employee, of a grower in the region and in the classification for which nominated.

(b) Each sheller member and alternate shall be, at the time of selection and during the term of office, a sheller or an officer or employee of a sheller in the region and in the classification for which nominated.

(c) A grower can be a nominee for only one grower member seat. If a grower is nominated for two grower member seats, he or she shall select the seat in which he or she desires to run, and the grower ballot shall reflect that selection.

(d) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(e) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pecan grower or handling operation.

§ 986.49 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the Council shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

§ 986.50 Term of office.

(a) Selected members and alternate members of the Council shall serve for terms of four years: *Provided,* That at the end of the first four (4) year term and in the nomination and selection of the second Council only, four of the grower

member and alternate seats and three of the sheller member and alternate seats shall be seated for terms of two years so that approximately half of the memberships' and alternates' terms expire every two years thereafter. Member and alternate seats assigned two-year terms for the seating of the second Council only shall be as follows:

(1) Grower member Seat 2 in all regions shall be assigned a two-year term;

(2) Grower member Seat 3 in all regions shall, by drawing, identify one member seat to be assigned a two-year term; and,

(3) Sheller Seat 2 in all regions shall be assigned a two-year term.

(b) Council members and alternates may serve up to two consecutive, four-year terms of office. Subject to section (c) below, in no event shall any member or alternate serve more than eight consecutive years on the Council as either a member or an alternate. However, if selected, an alternate having served up to two consecutive terms may immediately serve as a member for two consecutive terms without any interruption in service. The same is true for a member who, after serving for up to two consecutive terms, may serve as an alternate if nominated without any interruption in service. A person having served the maximum number of terms as set forth above may not serve again as a member or an alternate for at least twelve consecutive months. For purposes of determining when a member or alternate has served two consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(c) Each member and alternate member shall continue to serve until a successor is selected and has qualified.

(d) A term of office shall begin as set forth in the by-laws or as directed by the Secretary each year for all members.

(e) The Council may recommend, subject to approval of the Secretary, revisions to the start day for the term of office, the number of years in a term, and the number of terms a member or an alternate can serve.

§ 986.51 Vacancy.

Any vacancy on the Council occurring by the failure of any person selected to the Council to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the Council for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the Council shall be certified in writing to the Secretary. The Secretary shall notify the Council if the Secretary determines that any such person is not qualified.

§ 986.52 Council expenses.

The members and their alternates of the Council shall serve without compensation, but shall be reimbursed for the reasonable and necessary expenses incurred by them in the performance of their duties under this part.

§ 986.53 Powers.

The Council shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make bylaws, rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 986.54 Duties.

The duties of the Council shall be as follows:

(a) To act as intermediary between the Secretary and any handler or grower;

(b) To keep minute books and records which will clearly reflect all of its acts and transactions, and such minute books and records shall at any time be subject to the examination of the Secretary;

(c) To furnish to the Secretary a complete report of all meetings and such other available information as he or she may request;

(d) To appoint such employees as it may deem necessary and to determine the salaries, define the duties, and fix the bonds of such employees;

(e) To cause the books of the Council to be audited by one or more certified public accountants at least once for each fiscal year and at such other times as the Council deems necessary or as the Secretary may request, and to file with the Secretary three copies of all audit reports made;

(f) To investigate the growing, shipping and marketing conditions with respect to pecans and to assemble data in connection therewith;

(g) To investigate compliance with the provisions of this part; and,

(h) To recommend by-laws, rules and regulations for the purpose of administering this part.

§ 986.55 Procedure.

(a) The members of the Council shall select a chairman from their membership, and shall select such other officers and adopt such rules for the conduct of Council business as they deem advisable.

(b) The Council may provide for meetings by telephone, or other means of communication, and any vote cast at such a meeting shall be confirmed promptly in writing. The Council shall give the Secretary the same notice of its meetings as is given to members of the Council.

(c) *Quorum.* A quorum of the Council shall be any twelve voting Council members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the Council; *Provided,* That:

(1) Actions of the Council with respect to the following issues shall require a two-thirds (12 members) concurring vote of the Council:

(i) Establishment of or changes to by-laws;

(ii) Appointment or administrative issues relating to the program's manager or chief executive officer;

(iii) Budget;

(iv) Assessments;

(v) Compliance and audits;

(vi) Redefining of regions and reapportionment or reallocation of Council membership;

(vii) Modifying definitions of grower and sheller;

(viii) Research or promotion activities under § 986.68;

(ix) Grade, quality and size regulation under § 986.69(a)(1) and (2);

(x) Pack and container regulation under § 986.69(a)(3); and,

(2) Actions of the Council with respect to the securing of commercial bank loans for the purpose of financing start-up costs of the Council and its activities or securing financial assistance in emergency situations shall require a unanimous vote of all members present at an in-person meeting; *Provided,* That in the event of an emergency that warrants immediate attention sooner than a face-to-face meeting is possible, a vote for financing may be taken. In such event, the Council's first preference is a videoconference and second preference is phone conference, both followed by written confirmation of the members attending the meeting.

§ 986.56 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Council shall be subject to removal or suspension by the Secretary at any time.

Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 986.57 Funds and other property.

(a) All funds received pursuant to any of the provisions of this part shall be used solely for the purposes specified in this part, and the Secretary may require the Council and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in their possession belonging to the Council shall be delivered to their successor in office or to the Council, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Council full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

§ 986.58 Reapportionment and reestablishment of regions.

The Council may recommend, subject to approval of the Secretary, reestablishment of regions, reapportionment of members among regions, and may revise the groups eligible for representation on the Council. In recommending any such changes, the following shall be considered:

(a) Shifts in acreage within regions and within the production area during recent years;

(b) The importance of new production in its relation to existing regions;

(c) The equitable relationship between Council apportionment and regions;

(d) Changes in industry structure and/or the percentage of crop represented by various industry entities; and

(e) Other relevant factors.

Expenses, Assessments and Marketing Policy

§ 986.60 Budget.

As soon as practicable before the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare a budget of income and expenditures necessary for the administration of this part. The Council may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The Council shall present such budget to the Secretary with an accompanying report showing the basis for its calculations, and all shall be subject to Secretary approval.

§ 986.61 Assessments.

(a) Each handler who first handles inshell pecans shall pay assessments to the Council. Assessments collected each fiscal year shall defray expenses which the Secretary finds reasonable and likely to be incurred by the Council during that fiscal year. Each handler's share of assessments paid to the Council shall be equal to the ratio between the total quantity of inshell pecans handled by them as the first handler thereof during the applicable fiscal year, and the total quantity of inshell pecans handled by all regulated handlers in the production area during the same fiscal year. The payment of assessments for the maintenance and functioning of the Council may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. Handlers may avail themselves of an inter-handler transfer, as provided for in § 986.62, Inter-handler transfers.

(b) Based upon a recommendation of the Council or other available data, the Secretary shall fix three base rates of assessment for inshell pecans handled during each fiscal year. Such base rates shall include one rate of assessment for any or all varieties of pecans classified as native and seedling; one rate of assessment for any or all varieties of pecans classified as improved; and one rate of assessment for any pecans classified as substandard.

(c) Upon implementation of this part and subject to the approval of the Secretary, initial assessment rates per classification shall be set within the following prescribed ranges: Native and seedling classified pecans shall be assessed at one-cent to two-cents per pound; improved classified pecans shall be assessed at two-cents to three-cents per pound; and, substandard classified pecans shall be assessed at one-cent to two-cents per pound. These assessment ranges shall be in effect for the initial four years of the order.

(d) Subsequent assessment rates shall not exceed two percent of the aggregate of all prices in each classification across the production area based on Council data, or the average of USDA reported average price received by growers for each classification, in the preceding fiscal year as recommended by the Council and approved by the Secretary. After four years from the implementation of this part, the Council may recommend, subject to the approval of the Secretary, revisions to this calculation or assessment ranges.

(e) The Council, with the approval of the Secretary, may revise the assessment rates if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

(f) In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the Council may accept the payment of assessments in advance and may also borrow money for such purposes; *Provided,* That no loan may amount to more than 50 percent of projected assessment revenue projected for the year in which the loan is secured, and the loan must be repaid within five years.

(g) If a handler does not pay assessments within the time prescribed by the Council, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the Council with approval of the Secretary.

(h) On August 31 of each year, every handler warehousing inshell pecans shall be identified as the first handler of those pecans and shall be required to pay the assessed rate on the category of pecans in their possession on that date. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

(i) On August 31 of each year, all inventories warehoused by growers from the current fiscal year shall cease to be eligible for inter-handler transfer treatment. Instead, such inventory will require the first handler that handles such inventory to pay the assessment thereon in accordance with the prevailing assessment rates at the time of transfer from the grower to the said handler. The terms of this paragraph may be revised subject to the recommendation of the Council and approval by the Secretary.

§ 986.62 Inter-handler transfers.

Any handler inside the production area, except as provided for in § 986.61 (h) and (i), Assessments, may transfer inshell pecans to another handler inside the production area for additional handling, and any assessments or other marketing order requirements with respect to pecans so transferred may be assumed by the receiving handler. The Council, with the approval of the Secretary, may establish methods and procedures, including necessary reports,

to maintain accurate records for such transfers. All inter-handler transfers will be documented by forms or electronic transfer receipts approved by the Council, and all forms or electronic transfer receipts used for inter-handler transfers shall require that copies be sent to the selling party, the receiving party, and the Council. Such forms must state which handler has the assessment responsibilities.

§ 986.63 Contributions.

The Council may accept voluntary contributions. Such contributions may only be accepted if they are free from any encumbrances or restrictions on their use and the Council shall retain complete control of their use. The Council may receive contributions from both within and outside of the production area.

§ 986.64 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected; or

(2) The Council, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided,* That funds already in reserves do not equal approximately three fiscal years' expenses. Such reserve funds may be used:

(i) To defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any fiscal period when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part.

(b) Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(c) All funds received by the Council pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the Council and its members to account for all receipts and disbursements.

(d) Upon the removal or expiration of the term of office of any member of the Council, such member shall account for all receipts and disbursements and deliver all property and funds in their possession to the Council, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the Council full title to all of the property, funds, and claims vested in such member pursuant to this part.

(e) The Council may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other Council property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he or she may direct that such person or persons shall act as trustee or trustees for the Council.

§ 986.65 Marketing policy.

By the end of each fiscal year, the Council shall make a report and recommendation to the Secretary on the Council's proposed marketing policy for the next fiscal year. Each year such report and recommendation shall be adopted by the affirmative vote of at least two-thirds (2/3) of the members of the Council and shall include the following and, where applicable, on an inshell basis:

(a) Estimate of the grower-cleaned production and handler-cleaned production in the area of production for the fiscal year;

(b) Estimate of disappearance;

(c) Estimate of the improved, native, and substandard pecans;

(d) Estimate of the handler inventory on August 31, of inshell and shelled pecans;

(e) Estimate of unassessed inventory;

(f) Estimate of the trade supply, taking into consideration imports, and other factors;

(g) Preferable handler inventory of inshell and shelled pecans on August 31 of the following year;

(h) Projected prices in the new fiscal year;

(i) Competing nut supplies; and

(j) Any other relevant factors.

Authorities Relating to Research, Promotion, Data Gathering, Packaging, Grading, Compliance and Reporting

§ 986.67 Recommendations for regulations.

Upon complying with § 986.65, Marketing policy, the Council may propose regulations to the Secretary whenever it finds that such proposed regulations may assist in effectuating the declared policy of the Act.

§ 986.68 Authority for research and promotion activities.

The Council, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion, including paid generic advertising, designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of pecans including product development, nutritional research, and container development. The expenses of such projects shall be paid from funds collected pursuant to this part.

§ 986.69 Authorities regulating handling.

(a) The Council may recommend, subject to the approval of the Secretary, regulations that:

(1) Establish handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof, of any or all varieties or classifications of pecans during any period;

(2) Establish different handling requirements or minimum tolerances for particular grades, sizes, or qualities, or any combination thereof for different varieties or classifications, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, or pack of the container or containers, which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of pecans; and

(4) Establish inspection and certification requirements for the purposes of (a)(1) through (3) of this section.

(b) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the Council and approval by the Secretary, or other available information; or

(2) That regulations issued hereunder no longer tend to effectuate the declared policy of the Act.

(c) The authority to regulate as put forward in this subsection shall not in

any way constitute authority for the Council to recommend volume regulation, such as reserve pools, producer allotments, or handler withholding requirements which limit the flow of product to market for the purpose of reducing market supply.

(d) The Council may recommend, subject to the approval of the Secretary, rules and regulations to effectuate this sub-part.

§ 986.70 Handling for special purposes.

Regulations in effect pursuant to § 986.69, Authorities regulating handling, may be modified, suspended, or terminated to facilitate handling of pecans for:

(a) Relief or charity;

(b) Experimental purposes; and

(c) Other purposes which may be recommended by the Council and approved by the Secretary.

§ 986.71 Safeguards.

The Council, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 986.70, Handling for special purposes, were handled and used for the purpose stated.

§ 986.72 Notification of regulation.

The Secretary shall promptly notify the Council of regulations issued or of any modification, suspension, or termination thereof. The Council shall give reasonable notice thereof to industry participants.

Reports, Books and Other Records

§ 986.75 Reports of handler inventory.

Each handler shall submit to the Council in such form and on such dates as the Council may prescribe, reports showing their inventory of inshell and shelled pecans.

§ 986.76 Reports of merchantable pecans handled.

Each handler who handles merchantable pecans at any time during a fiscal year shall submit to the Council in such form and at such intervals as the Council may prescribe, reports showing the quantity so handled and such other information pertinent thereto as the Council may specify.

§ 986.77 Reports of pecans received by handlers.

Each handler shall file such reports of their pecan receipts from growers, handlers, or others in such form and at such times as may be required by the Council with the approval of the Secretary.

§ 986.78 Other handler reports.

Upon request of the Council made with the approval of the Secretary each handler shall furnish such other reports and information as are needed to enable the Council to perform its duties and exercise its powers under this part.

§ 986.79 Verification of reports.

For the purpose of verifying and checking reports filed by handlers on their operations, the Secretary and the Council, through their duly authorized representatives, shall have access to any premises where pecans and pecan records are held. Such access shall be available at any time during reasonable business hours. Authorized representatives of the Council or the Secretary shall be permitted to inspect any pecans held and any and all records of the handler with respect to matters within the purview of this part. Each handler shall maintain complete records on the receiving, holding, and disposition of all pecans. Each handler shall furnish all labor necessary to facilitate such inspections at no expense to the Council or the Secretary. Each handler shall store all pecans held by him in such manner as to facilitate inspection and shall maintain adequate storage records which will permit accurate identification with respect to inspection certificates of respective lots and of all such pecans held or disposed of theretofore. The Council, with the approval of the Secretary, may establish any methods and procedures needed to verify reports.

§ 986.80 Certification of reports.

All reports submitted to the Council as required in this part shall be certified to the Secretary and the Council as to the completeness and correctness of the information contained therein.

§ 986.81 Confidential information.

All reports and records submitted by handlers to the Council, which include data or information constituting a trade secret or disclosing the trade position, or financial condition or business operations of the handler shall be kept in the custody of one or more employees of the Council and shall be disclosed to no person except the Secretary.

§ 986.82 Books and other records.

Each handler shall maintain such records of pecans received, held and disposed of by them as may be prescribed by the Council for the purpose of performing its duties under this part. Such books and records shall be retained and be available for examination by authorized representatives of the Council and the Secretary for the current fiscal year and the preceding three (3) fiscal years.

Additional Provisions

§ 986.86 Exemptions.

(a) Any handler may handle inshell pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 1,000 inshell pounds during any fiscal year.

(b) Any handler may handle shelled pecans within the production area free of the requirements of this part if such pecans are handled in quantities not exceeding 500 shelled pounds during any fiscal year.

(c) Mail order sales are not exempt sales under this part.

(d) The Council, with the approval of the Secretary, may establish such rules, regulations, and safeguards, and require such reports, certifications, and other conditions, as are necessary to ensure compliance with this part.

§ 986.87 Compliance.

Except as provided in this subpart, no handler shall handle pecans, the handling of which has been prohibited by the Secretary in accordance with provisions of this part, or the rules and regulations thereunder.

§ 986.88 Duration of immunities.

The benefits, privileges, and immunities conferred by virtue of this part shall cease upon termination hereof, except with respect to acts done under and during the existence of this part.

§ 986.89 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remaining provisions and the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 986.90 Derogation.

Nothing contained in this part is or shall be construed to be in derogation of, or in modification of, the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 986.91 Liability.

No member or alternate of the Council nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under

this part or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence. The Council may purchase liability insurance for its members and officers.

§ 986.92 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the USDA or the United States to act as their agent or representative in connection with any of the provisions of this part.

§ 986.93 Effective time.

The provisions of this part and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 986.94.

§ 986.94 Termination.

(a) The Secretary may at any time terminate this part.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part applicable to pecans for market or pecans for handling at the end of any fiscal year whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers; *Provided,* That such majority of growers has produced more than 50 percent of the volume of pecans in the production area during such fiscal year. Such termination shall be effective only if announced on or before the last day of the then current fiscal year.

(d) The Secretary shall conduct a referendum within every five-year period beginning from the implementation of this part, to ascertain whether continuance of the provisions of this part applicable to pecans are favored by two-thirds by number or volume of growers voting in the referendum. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by growers who, during an appropriate period of time determined by the Secretary, have been engaged in the production of pecans in the production area: *Provided,* That termination of this part shall be effective only if announced on or before the last day of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 986.95 Proceedings after termination.

(a) Upon the termination of this part, the Council members serving shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Council, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time accounting for all receipts and disbursements; delivering all funds and property on hand, together with all books and records of the Council and of the joint trustees to such person as the Secretary shall direct; and, upon the request of the Secretary, executing such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Council or in said joint trustees.

(c) Any funds collected pursuant to this part and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Council, upon direction of the Secretary, as provided in this part, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon said joint trustees.

§ 986.96 Amendments.

Amendments to this part may be proposed from time to time by the Council or by the Secretary.

§ 986.97 Counterparts.

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pecans handled during an appropriate period of time determined by the Secretary, enter into such an agreement, then a marketing agreement shall exist for the pecans marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

§ 986.98 Additional parties.

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

§ 986.99 Order with marketing agreement.

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pecans in the same manner as is provided for in this agreement.

Dated: October 20, 2015.

Rex Barnes,

Associate Administrator, Agricultural Marketing Service.

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