

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 2. Section 430.3 is amended by:

■ a. Removing, in paragraph (m)(1), the words “appendix I, and appendix N” and adding in its place “and appendix I”;

■ b. Adding after “J2,” in paragraph (m)(2), “N,”.

■ 3. Appendix N to subpart B of part 430 is amended:

■ a. By revising the second sentence of the introductory note.

■ b. In section 2.4., by removing the phrase “(First Edition 2005–06)” and adding in its place “(Edition 2.0 2011–01)”;

■ c. In section 8.6.1, by removing in the third sentence, the phrase “4.5 *Power measurement accuracy*” and adding in its place, the phrase “4.4 *Power measurement instruments*” and by adding a sentence at the end of the section.

■ d. In section 8.6.2, by removing in the third sentence, the phrase “4.5 *Power measurement accuracy*” and adding in its place the phrase “4.4 *Power measurement instruments*”, and by adding a sentence at the end of the section.

The additions and revisions read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

Note: * * * However, any representation related to standby mode and off mode energy consumption of these products made after July 1, 2013 must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). * * *

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8.6.1 *Standby power measurement.* * * * The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

8.6.2 *Off mode power measurement.* * * * The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

[Docket No. CFPB–2012–0049]

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official commentary that interprets the requirements of the Bureau’s Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The exemption threshold is adjusted to increase to \$42 million from \$41 million. The adjustment is based on the 2.23 percent increase in the average of the CPI–W for the 12-month period ending in November 2012. Therefore, banks, savings associations, and credit unions with assets of \$42 million or less as of December 31, 2012, are exempt from collecting data in 2013.

DATES: This final rule is effective December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Joan Kayagil, Senior Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to the appropriate Federal agencies and make the data available to the public. The Bureau’s Regulation C (12 CFR part 1003) implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.*, banks, savings associations, and credit unions) with assets totaling \$10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions. 12 U.S.C. 2808(b). The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the CPI–W for

1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of \$1 million dollars.

The definition of “financial institution” in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest million. 12 CFR 1003.2. For 2012, the threshold was \$41 million. During the 12-month period ending in November 2012, the CPI–W increased by 2.23 percent. As a result, the exemption threshold is increased to \$42 million. Thus, banks, savings associations, and credit unions with assets of \$42 million or less as of December 31, 2012, are exempt from collecting data in 2013. An institution’s exemption from collecting data in 2013 does not affect its responsibility to report data it was required to collect in 2012.

II. Procedural Requirements

Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 1003.2 (Financial institution)–2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and nondiscretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and the amendment is adopted in final form.

Under section 553(d) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date except for certain instances, including when a substantive rule grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d). As this rule increases the exemption threshold, and is therefore a substantive rule that grants or recognizes an exemption or relieves a restriction, the Bureau is publishing this final rule less than 30 days before its effective date. Additionally, as it is in the public interest to make the

updated threshold for the asset-size exemption available publicly as soon as possible after all data needed for the calculation are available, the Bureau is making the final rule effective immediately upon publication in the **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Bureau has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

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 in the preamble, the Bureau of Consumer Financial Protection amends 12 CFR part 1003 as follows:

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. In Supplement I to part 1003, under *Section 1003.2—Definitions*, under the definition “*Financial institution*”, paragraph 2 is revised to read as follows:

Supplement I to Part 1003—Staff Commentary

Section 1003.2—Definitions

Financial institution.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2013, the asset-size exemption threshold is \$42 million. Banks, savings associations, and credit unions with assets at or below \$42 million as of December 31, 2012, are exempt from collecting data for 2013.

Dated: December 21, 2012.

Richard Cordray,
Director, Consumer Financial Protection Bureau.

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DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 3

Minimum Capital Ratios; Issuance of Directives

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 1 to 199, revised as of January 1, 2012, on page 52, in appendix C to Part 3, Part I, Section 1 is revised to read as follows:

Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches

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Part I. General Provisions

Section 1. Purpose, Applicability, Reservation of Authority, and Principle of Conservatism

(a) *Purpose.* This appendix establishes:

- (1) Minimum qualifying criteria for banks using bank-specific internal risk measurement and management processes for calculating risk-based capital requirements;
- (2) Methodologies for such banks to calculate their risk-based capital requirements; and
- (3) Public disclosure requirements for such banks.

(b) *Applicability.* (1) This appendix applies to a bank that:

- (i) Has consolidated assets, as reported on the most recent year-end Consolidated Report of Condition and Income (Call Report) equal to \$250 billion or more;
- (ii) Has consolidated total on-balance sheet foreign exposure at the most recent year-end equal to \$10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with head office or guarantor located in another country plus redistributed guaranteed amounts to the country of head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);
- (iii) Is a subsidiary of a depository institution that uses 12 CFR part 3, appendix C, 12 CFR part 208, appendix F, 12 CFR part 325, appendix D, or 12 CFR part 567, appendix C, to calculate its risk-based capital requirements; or
- (iv) Is a subsidiary of a bank holding company that uses 12 CFR part 225, appendix G, to calculate its risk-based capital requirements.

(2) Any bank may elect to use this appendix to calculate its risk-based capital requirements.

(3) A bank that is subject to this appendix must use this appendix unless the OCC determines in writing that application of this appendix is not appropriate in light of the bank's asset size, level of complexity, risk

profile, or scope of operations. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(c) *Reservation of authority*—(1) *Additional capital in the aggregate.* The OCC may require a bank to hold an amount of capital greater than otherwise required under this appendix if the OCC determines that the bank's risk-based capital requirement under this appendix is not commensurate with the bank's credit, market, operational, or other risks. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(2) *Specific risk-weighted asset amounts.* (i) If the OCC determines that the risk-weighted asset amount calculated under this appendix by the bank for one or more exposures is not commensurate with the risks associated with those exposures, the OCC may require the bank to assign a different risk-weighted asset amount to the exposures, to assign different risk parameters to the exposures (if the exposures are wholesale or retail exposures), or to use different model assumptions for the exposures (if relevant), all as specified by the OCC.

(ii) If the OCC determines that the risk-weighted asset amount for operational risk produced by the bank under this appendix is not commensurate with the operational risks of the bank, the OCC may require the bank to assign a different risk-weighted asset amount for operational risk, to change elements of its operational risk analytical framework, including distributional and dependence assumptions, or to make other changes to the bank's operational risk management processes, data and assessment systems, or quantification systems, all as specified by the OCC.

(3) *Regulatory capital treatment of unconsolidated entities.* If the OCC determines that the capital treatment for a bank's exposure or other relationship to an entity not consolidated on the bank's balance sheet is not commensurate with the actual risk relationship of the bank to the entity, for risk-based capital purposes, it may require the bank to treat the entity as if it were consolidated onto the bank's balance sheet and require the bank to hold capital against the entity's exposures. The OCC will look to the substance of and risk associated with the transaction as well as other relevant factors the OCC deems appropriate in determining whether to require such treatment and in determining the bank's compliance with minimum risk-based capital requirements. In making a determination under this paragraph, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.12.

(4) *Other supervisory authority.* Nothing in this appendix limits the authority of the OCC under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law.