



Compliance News...

The FFIEC Gives New Twist to the HMDA “Temporary Financing” Definition

The Federal Financial Institutions Examination Council (FFIEC) issued a [memorandum](#) on December 5, 2005, to all financial institutions subject to reporting under the Home Mortgage Disclosure Act (HMDA). The memorandum included guidance on resubmissions, rate spreads vs. HOEPA, pre-approvals and a new frequently asked question (FAQ). The “new” definition of “temporary financing” for HMDA reporting purposes in the FAQ’s is the most interesting. The FFIEC is basically stating this is not a new definition of temporary financing; rather, this has always been the definition of temporary financing for HMDA reporting.

The new [Temporary Financing FAQ](#) specifically states:

Temporary Financing. When is a loan “temporary financing” such that it is exempt from reporting?

Answer: The regulation lists as examples of temporary financing construction loans and bridge loans. See 203.4(d)(3). Construction and bridge loans are illustrative, not exclusive, examples of temporary financing. The examples indicate 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 it’s 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 203.2(h).

The FAQ also provides clarification to one of two issues noted in the June 20, 2005, Banker’s Compliance Consulting (BCC) newsletter titled, “[HMDA Letter to our Clients – June 2005](#)”. The letter included opinion and insight from BCC and Jane Gell, Managing Counsel of the Federal Reserve Board in Washington, D.C., regarding a letter that was sent by the Kansas City Regional Office of the FDIC to banks in their region, subject to HMDA reporting, in May 2005. The letter issued by the Kansas City FDIC office included the following interpretation about temporary financing:

We were recently asked to opine on whether a particular type of loan qualifies as temporary financing. The loan product in question, sometimes known as a “splash and dash” loan, is a relatively short-term loan made to finance the renovation or “rehab” of a residential property for purposes of speculation. In other words, “splash and dash” borrowers use the loan proceeds to purchase and renovate properties for the purpose of immediate resale to others. The question is whether this kind of loan represents “temporary financing” for purposes of exclusion found in HMDA and Regulation C. The short answer is that it does not meet the definition and these loans must be reported on the HMDA LAR.

Based on this “new” guidance financial institutions need to go back and identify all loans that will be HMDA reportable under this definition and add them to your 2005 Loan Application Register (LAR). We understand that this is probably catching many financial institutions off guard; however, it appears the authorities that count have spoken. Additionally, many of your local examiners and field offices probably have not been briefed on this issue and this new interpretation may be news to them as well. We encourage you to contact your regulator to make sure you are on the same page with them prior to making changes to your 2005 HMDA-LAR.

2006 HMDA Threshold Released

Want to get rid of your HMDA headaches? Convince management to sell assets to fall below the new \$35 million threshold! The Federal Reserve Board recently announced the asset size exemption for financial institutions was raised to \$35 million for 2006. Thus, financial institutions with assets of \$35 million or less, as of December 31, 2005, will be exempt from HMDA in 2006 (even if you have an office in a Metropolitan Area).