



Banker's Compliance Consulting

If you are regulated by the FDIC, located within the Kansas City Region (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota) **and** subject to the Home Mortgage Disclosure Act (HMDA or Regulation C), you may have received a letter from your local field office pertaining to temporary financing and refinancing. Several clients have contacted us concerning this information as it is not consistent with the general understanding of HMDA.

It is our opinion that this information is not accurate. The Federal Reserve has all authority for interpreting Regulation C, so it comes as a surprise that the FDIC would issue such an interpretation. Additionally, this new interpretation is inconsistent with all other information we have ever received pertaining to temporary financing and refinancing transactions.

Specifically, the letter states “rehab” or “splash and dash” loans are not exempt under the temporary financing exemption. The letter also states that temporary financing is exclusively limited to bridge and construction loans and in this context does not mean “short term”.

The Federal Reserve has never defined “temporary financing” but has offered guidance through various memorandums, Frequently Asked Questions (FAQ’s), etc. We are in possession of a letter from the Federal Reserve that states “Temporary financing is not defined by Regulation C; however, temporary financing usually means the loan will not be repaid from ordinary income, is a single payment loan and is less than two years in term.” Another test is to consider the repayment of the loan. If the loan will be repaid by another loan or by the sale of the asset securing the loan, then it is most likely temporary. These two tests have been the “standard” for many years.

We have contacted Jane Gell, Managing Counsel of the Federal Reserve Board in Washington, D.C. Ms. Gell is one of four attorneys responsible for administering the Federal Reserve’s regulatory oversight of compliance regulations. After reading the FDIC memo, Ms. Gell indicated that it was not accurate. Specifically, Ms. Gell indicated that there is no “exclusive limit” to the definition of temporary financing. Therefore, loans other than bridge or construction loans can meet the temporary financing exemption. Additionally, Ms. Gell indicated that in most cases, “rehab” or “splash and dash” loans are not to be reported on an institution’s HMDA Loan Application Register as they are temporary financing.

Some of the letters that were sent also include an interpretation of “refinancing” under Regulation C. It is our understanding that this section was optional per each FDIC Field Office. The letter states if a bank only renews a loan (replace loan A with loan B), but writes “Renewal, Not Paid” on the old loan (loan A), these transactions do not necessarily meet the “satisfy and replace” provision and therefore should not be reported as a refinance under Regulation C. Once again, we disagree. HMDA clearly states that ALL refinancings must be reported. The term “refinancing” is defined in §203.2(k)(2) of Regulation C where it states:

Refinancing means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which:
(2) For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.

It’s actually very straightforward. If loan A is replaced (you might like to use the terms “satisfied” or “extinguished”) by loan B and both are dwelling secured, you have a refinancing for HMDA reporting. Nothing else matters.

The Federal Reserve has never defined “satisfy and replace” but has offered guidance through various memorandums, FAQ’s, etc. This interpretation by the FDIC would seem to go against previous guidance from the Federal Reserve and the Federal Financial Institution Examination Council (FFIEC).

You might find this St. Louis Federal Reserve Bank article helpful:

<http://www.stlouisfed.org/hmdaregcamendments/pages/refinancing.html>

In the meantime it is our advice that you continue to follow you local examiner’s guidance; however, in doing so, any “rehab” loans (the ones you think are temporary but the examiners now say are not) or “renewal” loans (the ones you think are refinances but the examiners now say are not) should be carefully flagged so that you can add or remove them from the Loan Application Register (LAR) upon clarification.

We hope to have this resolved soon, but the regulatory wheels seem to turn very slowly. It is our hope that it will be resolved before 12/31/05 so that your LAR can be cleaned up prior to submission on March 1, 2006.