

# CFPB Issues Proposed Changes and Clarifications to New HMDA Requirements

April 25, 2017

The Consumer Financial Protection Bureau (“CFPB”) has issued proposed amendments to Regulation C, which implements the Home Mortgage Disclosure Act (“HMDA”), to clarify and correct certain provisions of the CFPB’s 2015 overhaul of the HMDA requirements. One proposed clarification of significance to New York lenders addresses the reporting of consolidation, extension and modification agreements (“CEMAs”).

## I. Background

HMDA requires covered lenders to collect, report, and disclose certain data about their mortgage activities. In October of 2015, the CFPB issued a final rule that significantly amended these requirements (the “2015 HMDA Final Rule”). The 2015 HMDA Final Rule, which we addressed in a [prior advisory](#), modified the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data. Most of the changes made by the 2015 HMDA Final Rule take effect on January 1, 2018, although certain provisions are phased in after that date.

Among other things, the new proposal seeks to (a) create a new reporting exception for certain transactions associated with New York CEMAs, (b) clarify the definition of “automated underwriting system” and “temporary financing,” (c) adopt transition rules for reporting two data points — loan purpose and loan identifier, and (d) create a safe harbor for any bona fide errors in reporting census tract information due to incorrect information generated by the CFPB’s geocoding tool. These proposed changes are discussed below.

## II. Proposed Changes and Clarifications

### A. New Exception in Connection with New York CEMA Loans

A CEMA is a relatively common way to structure a loan in New York State so as to avoid a borrower paying mortgage recording tax on funds previously disbursed on an existing loan. Under current Regulation C, a CEMA is not reportable because the existing debt is technically not “satisfied and replaced” and thus it does not meet the definition of a refinance under Regulation C. The 2015 HMDA Final Rule changes this position by treating CEMAs as an extension of credit under Regulation C even though the existing debt is not “satisfied and replaced.”

Accordingly, effective January 1, 2018, CEMAs will generally be reportable under Regulation C.

The CFPB's current proposal seeks to clarify that any preliminary funding done as part of a CEMA is not to be separately reported from the overall CEMA. In other words, if a lender is extending additional funds as part of a CEMA, the lender should only report the total loan amount under the CEMA (existing debt and new funds) and should not report the extension of the new funds and then the overall total loan. To do so would result in double reporting.

## B. Clarification of Certain Terms

The proposal would clarify key terms including “automated underwriting system” and “temporary financing.”

### 1. Automated Underwriting System

The 2015 HMDA Final Rule requires lenders 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 system. The CFPB has noted some uncertainty regarding the meaning of “automated underwriting system” in the 2015 HMDA Final Rule, and is proposing to clarify that the term means an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit (“Covered Person”) 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 the Covered Person. If the developer of this tool has never been a Covered Person at the time a lender uses the tool to evaluate an application, the lender can report “not applicable” for “automated underwriting system.”

### 2. Temporary Financing

The 2015 HMDA Final Rule does not apply to “temporary financing.” To clarify the meaning of this term, the CFPB is proposing to clarify that a loan or line of credit is considered “temporary financing” and thus excluded under Regulation C if it is designated to be replaced by separate permanent financing extended to the same borrower at a later time. The proposal would also clarify that a construction-only loan or line of credit is considered “temporary financing” and thus excluded under Regulation C if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale.

## C. Transition Rule for Loan Purpose and Unique Identifier

The proposal would add transition rules for “loan purpose” and the loan originator’s “unique identifier” data points. For certain purchased loans that were originated prior to the effective date of their respective reporting requirement, this would permit covered financial institutions to report “not applicable” for these data points.

## D. Safe Harbor for Bona Fide Errors Due To Incorrect Information From the CFPB’ Geocoding Tool

The 2015 HMDA Final Rule provides that an incorrect entry for a census tract number on an HMDA report is deemed a bona fide error and is not a violation of Regulation C or HMDA if the covered financial institution maintains procedures reasonably adapted to avoid such errors. The CFPB plans to make available on its website a

geocoding tool for covered financial institutions to identify the census tract in which a property is located. The proposed amendments would further clarify what qualifies as a bona fide error by establishing a safe harbor for a covered financial institution that uses the geocoding tool provided by the CFPB, enters an accurate property address, and reports an incorrect census tract due to incorrect information generated by the geocoding tool.

## E. Effective Date

The CFPB states in the proposal that for the proposed amendments to have the intended effect, their effective dates should be synchronized with the related effective dates in the 2015 HMDA Final Rule. Accordingly, since most of the amendments included in the 2015 HMDA Final Rule will take effect on January 1, 2018, the CFPB is proposing that most of the proposed amendments take effect on January 1, 2018.

## III. More Information

The proposed amendments can be found here: <https://www.federalregister.gov/documents/2017/04/25/2017-07838/technical-corrections-and-clarifying-amendments-to-the-home-mortgage-disclosure-regulation-c-october>. Comments on the proposal must be submitted to the CFPB by May 25, 2017.

Please note that this advisory is a general overview of the proposed amendments to Regulation C and is not intended as a comprehensive explanation of all aspects of the amendments or as formal legal advice. If you have any questions regarding the proposed amendments, Regulation C, HMDA or mortgage compliance issues in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at [jsimon@cullenanddykman.com](mailto:jsimon@cullenanddykman.com) or Mandy Xu at 516-357-3850 or via email at [mxu@cullenanddykman.com](mailto:mxu@cullenanddykman.com).

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