Dwelling - Revised Definition in HMDA Proposal

by kblanchard@keycomplianceservices.com - Sunday, August 10, 2014


The revised definition and commentary for a dwelling should make folks happy. The proposed revision, if finalized as proposed, really will mean less time agonizing about whether properties are HMDA reportable or not as a dwelling. And for those banks that can't seem to believe that a home purchased to be used as an office is an office and not a dwelling, well, the proposed rules will make that clear.

The proposed definition of a dwelling has exclusions that definitely clarify what is a reportable dwelling. Many of the property types that have caused much agonizing in the past would be clearly not reported, such as RVs or boats used as primary dwellings, house boats, floating homes, etc. The commentary also clearly states that residences purchased to be used for a non-residential purpose such as an office will not be reportable, clearing up that misunderstanding that confused many banks. (It is no longer a house!)

The proposed revised definition is: "(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 or other factory-built home, or a multifamily residential structure."

The new commentary as proposed should resolve a lot of agonizing questions! No floating homes, no RVs used as residences, no mobile homes built prior to 1976 and thus not built under HUD rules.

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. A dwelling also includes a multifamily residential structure such as an apartment, condominium, or cooperative building or complex.

2. 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, and college dormitories, and structures originally designed as dwellings but used exclusively for commercial purposes such as homes converted to daycare facilities or professional offices.

3. 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. However, an institution shall consider a property that includes five or more individual dwelling units to have a primary residential use.
The Bureau is soliciting feedback on whether the revised definition and exclusions are appropriate. Personally, I think it is helpful that these items, which are questioned frequently, are so clearly spelled out.

The bright line regarding mixed use properties with five or more individual dwelling units may confuse people. Those properties would be reportable as residential regardless of square footage devoted to non-residential use or total income from non-residential use. Regardless, it does make it a hard and fast rule to point to and to train on. Confusion could arise from insurance requirements; staff will just have to understand that HMDA reporting is a separate rule and does not govern how a property is insured for flood or other hazards.