

Mixed-Use Properties and HMDA

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<http://www.kaybeescomplianceinsights.com/mixed-use-properties-hmda/>

There is a subtle but important change in the revised HMDA rules regarding mixed-use properties.

Agricultural Exclusion

You probably already know that, under the revised 2018 rules, a loan secured by a dwelling that sits on land used primarily for agricultural purposes is an excluded transaction and not HMDA reportable no matter how the loan proceeds are used. This exclusion can be found in the revised Commentary at §1003.3(c)(9).

Non-Farm Mixed-Use Properties

For non-farm mixed-use transactions, there is a similar change that is achieved in a different manner.

The comment at 1003.2(f)-4 regarding mixed-use properties tells us that “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.”

Not a Dwelling

If a property with a primarily residential use is a dwelling, a property with a primarily non-residential use is not a dwelling. A loan must be dwelling secured to be HMDA reportable. (The optional non-dwelling secured home improvement category is going away in 2018.)

The comment at 1003.2(i)-4 goes on to say:

“A closed-end mortgage loan or an open-end line of credit to improve a dwelling used for residential and commercial purposes (for example, a building containing apartment units and retail space), or the real property on which such a dwelling is located, is a home improvement loan if the loan's proceeds are used either to improve the entire property (for example, to replace the heating system), or if the proceeds are used primarily to improve the residential portion of the property. An institution may use any reasonable standard to determine the primary use of the loan proceeds. An institution may select the standard to apply on a case-by-case basis.”

This means that if your property is not a dwelling, such as a mixed-use property with a primarily non-residential use, loans secured by such a property will not be HMDA reportable no matter the use of loan proceeds.

Where does this leave us?

1. Properties secured by dwellings on primarily agricultural land are not HMDA reportable due to the exclusion for agricultural use.
2. Properties secured by a primarily non-residential property are not HMDA reportable because they are not defined as a dwelling.

The same result was reached by two different paths.

This is a change from current rules which did bring loans secured by such collateral into HMDA reporting if improvements were made to the entire property or to the residential portion. Under this revision, the property is not a dwelling and any loans secured by such a property will not be reportable for HMDA regardless of use of proceeds.

"Property" is not limited to a single structure

Also, it is important to understand that a “property” does not mean just a single structure. A primarily non-residential property could consist of several structures with several being non-residential and one residential. Using a test such as square footage, the multi-structure property could very well be non-residential and loans secured by such a property will not be dwelling secured.

If you need help getting up to speed with the new HMDA rules, [contact us!](#) With the [HMDA Academy](#), you get immediate access to 5 recorded webinars on the new rules and all future webinars through June 2019. The next webinar is scheduled for December 13, 2016.