
community BANKER

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Welcome to the latest issue of the COMMUNITY BANKER.

The Community Banker is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

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The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

Final Rule for Reg. C HMDA Thresholds Change

The Consumer Financial Protection Bureau has released the final rule changing the threshold of mortgage originations for both closed-end and open-end credit, which will tell you whether or not your financial institution is an HMDA reporter.

Effective July 1, 2020, the final rule permanently raises the closed-end coverage threshold from twenty-five to **one hundred** closed-end mortgage loans in each of the two preceding calendar years. Effective January 1, 2022, when the temporary threshold of five hundred open-end lines of credit expires, the final rule sets the permanent open-end threshold at **two hundred** open-end lines of credit in each of the two preceding calendar years.



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If your data collection doesn't easily allow you to quickly change your compliance practices, a bank that was a "financial institution" for reporting purposes as of January 1, 2020, but is not a "financial institution" on July 1, 2020, because it originated fewer than one hundred closed-end mortgage loans in 2018 or 2019 may report *voluntarily* in 2021 its closed-end HMDA data collected in 2020, as long as the bank reports such closed-end data for the full calendar year 2020.

Your bank will be subject to either **(a)** only Regulation B, or **(b)** both HMDA and Regulation B. Even if the new rule now removes your bank from being an HMDA reporter, lenders who have been required to report HMDA Data so far in 2020 must report until July 1, 2020. That means that your HMDA Loan Application Register should have been updated by April 30, 2020. Also, remember that even if your bank isn't an HMDA institution now, Regulation B imposes data collection requirements for financial institutions whether or not they are subject to the HMDA. Even after the effective date, banks will still be required under Regulation B to collect information regarding ethnicity, race, sex, marital status, and age where the credit sought is primarily for the purchase or refinancing of a dwelling that is or will be the applicant's principal residence and will secure the credit. The HMDA final rule may be found at http://files.consumerfinance.gov/f/documents/cfpb_final-rule_home-mortgage-disclosure_regulation-c_2020-04.pdf.

THE QUESTION STILL REMAINS: WHAT'S A "DWELLING" FOR HMDA PURPOSES?

A loan is not a closed-end mortgage "loan" and a line of credit is not an open-end "line of credit" unless it is secured by a lien on a "dwelling." A dwelling is a residential structure. There is *no* requirement that the structure be attached to real property or that it be the applicant's or borrower's residence. Examples of dwellings include:

1. Principal residences;
2. Second homes and vacation homes;
3. Investment properties;
4. Residential structures attached to real property;
5. Detached residential structures;
6. Individual condominium and cooperative units;
7. Manufactured homes or other factory-built homes; and
8. Multifamily residential structures or communities, such as apartment buildings, condominium complexes, cooperative buildings or housing complexes, and manufactured home communities. 12 CFR 1003.2(f); Comments 2(f)-1 and -2.

A dwelling is *not* limited to a structure that has four or fewer units. It also includes a multifamily dwelling, which is a dwelling that includes five or more individual dwelling units. A multifamily dwelling includes a manufactured home community.

This is counterintuitive, but a loan related to a manufactured home community is secured by a dwelling even if it is not secured by any individual manufactured homes, but is secured only by the *land* that constitutes the manufactured home community. However, a loan related to a multifamily residential structure or community other than a manufactured home community is not secured by a dwelling unless

it is secured by one or more individual dwelling units. For example, a loan that is secured only by the common areas of a condominium complex or only by an assignment of rents from an apartment building is not secured by a dwelling. Comment 2(f)-2. Further, a covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. For example, assume a landlord uses a covered loan to improve five or more dwellings, each with one individual dwelling unit, located in different parts of a town, and the loan is secured by those properties. The covered loan is not secured by a multifamily dwelling as defined by § 1003.2(n). Comment 2(n)-3.

The following are not dwellings:

1. Recreational vehicles, such as boats, campers, travel trailers, or park model recreational vehicles;
2. Houseboats, floating homes, or mobile homes constructed before June 15, 1976;
3. Transitory residences, such as hotels, hospitals, college dormitories, or recreational vehicle parks; and
4. Structures originally designed as a dwelling but used exclusively for commercial purposes, such as a home converted to a daycare facility or professional office. Comment 2(f)-3.

A property that is used for both residential and commercial purposes, such as a building that has apartment and retail units, is a dwelling if the property's primary use is residential. Comment 2(f)-4.

A property used for both long-term housing and to provide assisted living or supportive housing services is a dwelling. However, transitory residences used to provide such services are not dwellings. Properties used to provide medical care, such as skilled nursing, rehabilitation, or long-term medical care, are not dwellings. If a property is used for long-term housing, to provide related services (such as assisted living), and to provide medical care, the property is a dwelling if its primary use is residential. Comment 2(f)-5.

A financial institution may use any reasonable standard to determine a property's primary use, such as square footage, income generated, or number of beds or units allocated for each use. It may select the standard on a case-by-case basis.

DISCLAIMER

COMMUNITY BANKER is designed to share ideas and developments related to the field of banking. It is not intended as legal advice and nothing in the COMMUNITY BANKER should be relied upon as legal advice in any particular matter. If legal advice or other expert assistance is needed, the services of competent, professional counsel should be sought.