



HMDA – Make sure you get it right!

December 16, 2020

Webinar Questions

1. Did I hear correctly that a mobile home park is HMDA reportable?

Taking a security interest in a manufactured home community, even if you don't take any manufactured homes as collateral, is HMDA reportable. Manufactured homes are defined below. Within the definition of dwelling, they define a multifamily residential community, which includes manufactured home communities.

(l) Manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development establishing manufactured home construction and safety standards (24 CFR 3280.2). For purposes of § 1003.4(a)(5), the term also includes a multifamily dwelling that is a manufactured home community.

Official Interpretation

2(l) Manufactured Home

1. Definition of a manufactured home. *The definition in § 1003.2(l) refers to the Federal building code for manufactured housing established by the U.S. Department of Housing and Urban Development (HUD) (24 CFR part 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of § 1003.2(l). Recreational vehicles are excluded from the HUD code standards pursuant to 24 CFR 3282.8(g) and are also excluded from the definition of dwelling for purposes of § 1003.2(f). See comment 2(f)-3.*

2. Identification. *A manufactured home will generally bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location noting its compliance with the Federal Manufactured Home Construction and Safety Standards in force at the time of manufacture and providing other information about its manufacture pursuant to 24 CFR 3280.5. A manufactured home will generally also bear a HUD Certification Label pursuant to 24 CFR 3280.11.*

2. Multifamily residential structures and communities. *A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or housing complex, or a manufactured home community. A loan related to a manufactured home community is secured by a dwelling for purposes of § 1003.2(f) even if it is not secured by any individual manufactured homes, but only by the land that constitutes the manufactured home community including sites for manufactured homes. However, a loan related to a multifamily residential structure or community that is not a manufactured home community is not secured by a dwelling for purposes of § 1003.2(f) if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues.*

2. A refinance of a warehouse and is the owner's primary residence within it most of the building is warehouse though?

If the question is, “Would this be a dwelling for HMDA reporting?”, it would depend on the primary use. It sounds as if the primary use is a warehouse, but if the warehouse sits empty and isn’t used and the residence is used, the primary use may be residential. You’d want to document the primary use of the property using whatever method makes sense for the property, such as square footage, rental income, etc. If the primary use is for a business purpose and not as a dwelling, it would not be HMDA reportable. The file should be documented with the basis for your decision.

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. Comments 2(f)-4 and -5.

3. Would a loan secured by a property containing a house (borrower’s primary residence) and several outbuildings used to conduct the borrower’s business be considered a dwelling/ be a covered loan? Thanks!

If the loan is secured by a dwelling, the loan would most likely be reportable. If it’s for a consumer purpose, any dwelling-secured loan is reportable. If it’s for a business purpose, you would report only those for purchase, refinance, or home improvement. You’d need to determine whether the primary purpose of the loan is business or consumer. See commentary below. Additional resources are in Regulation Z 1026.3(a).

Paragraph 3(c)(10)

1. General. Section 1003.3(c)(10) provides a special rule for reporting a closed-end mortgage loan or an open-end line of credit that is or will be made primarily for a business or commercial purpose. If an institution determines that a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose, then the loan or line of credit is a covered loan only if it is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p) and no other exclusion applies. Section 1003.3(c)(10) does not categorically exclude all business- or commercial-purpose loans and lines of credit from coverage.

2. Primary purpose. An institution must determine in each case if a closed-end mortgage loan or an open-end line of credit primarily is for a business or commercial purpose. If a closed-end mortgage loan or an open-end line of credit is deemed to be primarily for a business, commercial, or organizational purpose under Regulation Z, 12 CFR 1026.3(a) and its related commentary, then the loan or line of credit also is deemed to be primarily for a business or commercial purpose under § 1003.3(c)(10).

3. Examples—covered business- or commercial-purpose transactions. The following are examples of closed-end mortgage loans and open-end lines of credit that are not excluded from reporting under § 1003.3(c)(10) because, although they primarily are for a business or commercial purpose, they also meet the definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property;

ii. A closed-end mortgage loan or an open-end line of credit to improve a doctor’s office or a daycare center that is located in a dwelling other than a multifamily dwelling; and

iii. A closed-end mortgage loan or an open-end line of credit to a corporation, if the funds from the loan or line of credit will be used to purchase or to improve a dwelling, or if the transaction is a refinancing.

4. Examples—excluded business- or commercial-purpose transactions. The following are examples of closed-end mortgage loans and open-end lines of credit that are not covered loans because they primarily are for a business or commercial purpose, but they do not meet the

definition of a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p):

i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to improve or expand a business, for example to renovate a family restaurant that is not located in a dwelling, or to purchase a warehouse, business equipment, or inventory;

ii. A closed-end mortgage loan or an open-end line of credit to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory; and

iii. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily for business or commercial purposes other than home purchase, home improvement, or refinancing, even if the loan or line of credit is cross-collateralized by a covered loan.

4. For Spec Construction loans: If the home does not sell once complete and it is extended into a mini-perm (P&I payments for 6-12 months), is that loan then reportable or is it still exempt due to the speculative nature of the collateral?

This scenario is not addressed in the regulation or commentary. If the 6- to 12-month loan is an extension/modification until the property sells, I think it could be argued that it would not be reportable using the same logic used in the original exemption. However, if the terms of the new loan are to pay back the loan — in effect, short-term permanent financing — and payment is no longer expected to come from the sale of the home, it is my opinion that new loan would be reportable.

5. Just a quick question on commercial loans where the title and loan is to an individual and later on the title and loan is transferred to an LLC. Is it treated as a purchase if the title is transferred when the note is redone and not reported if the deed is transferred prior to the loan being redone?

The definition of refinance states at least one of the borrowers must be the same borrower. If the loan would not be to at least one of the same borrowers, it would not be a refinance. If the deed is transferred at the time of the loan, it would be reported as a purchase.

6. Regarding the temporary financing exclusion, thanks for clarifying that the end financing must be to the same borrower in order to be excluded. (Maybe insert "same" in the handout?)

Thank you for the recommendation. Slide 11 does state that the permanent financing must be to the same borrower.

7. On slide 22 my question is on the partial exemption for closed end loans. We just hit 500 LAR entries this year. In 2019 we had around 300 entries I believe. Since we didn't hit 500 in each year, we would still be exempt for 2021 correct?

The regulation says you must have fewer than 500 originated closed-end mortgage loans (not LAR entries) in each of the two preceding years for the exemption to apply. For example, if in 2019 originated closed-end mortgage loans were 300 and in 2020 originated closed-end loans were 510, you would not have fewer than 500 closed-end originated mortgage loans in each of the preceding two years, so you would not be eligible for the partial exemption in 2021.

8. Slide 23 - If we have to repurchase a loan and it was originated in the same year as it was originally reported, do we use the same ULI?

Yes, slide nine in the materials included the repurchase provision that stated it would be considered a purchase regardless of whether it occurred in the same calendar year or a subsequent calendar year. The citation section below states that you should use the same ULI on a purchased loan.

3. ULI—purchased covered loan. *If a financial institution has previously assigned a covered loan with a ULI or reported a covered loan with a ULI under this part, a financial institution that purchases that covered loan must report the same ULI that was previously assigned or reported. For example, if a loan origination previously was reported under this part with a ULI, the financial institution that purchases the covered loan would report the purchase of the covered loan using the same ULI. A financial institution that purchases a covered loan must use the ULI that was assigned by the financial institution that originated the covered loan. A financial institution that purchases a covered loan assigns a ULI and records and submits it in its loan/application register pursuant to § 1003.5(a)(1) if the covered loan was not assigned a ULI by the financial institution that originated the loan because, for example, the loan was originated prior to January 1, 2018, or the loan was originated by an institution not required to report under this part.*

9. If it is a refinance and the borrower was not on the original loan, is the loan exempt from HMDA?

For a loan to be a refinance, there must be one borrower common to the original loan and the new loan. Therefore, I presume the transaction you are describing is not a refinance.

If the new loan is a business-purpose loan, it would be exempt from HMDA only if it didn't meet the definition of purchase, refinance, or home improvement. If the new loan is a consumer-purpose loan, it would be reported under code 4, Other, assuming it is not a purchase, refinance, or home improvement loan and that it is secured by a dwelling.

10. Would you report if the primary purpose of the mixed-use property is the retail space, but the funds are used to improve the living space?

If the primary use of the property is not a residential dwelling, it would not be a dwelling as defined by HMDA, and therefore a loan secured by the property would not be a reportable transaction even if the funds were used to improve the residential part of the building.

4. 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.*

11. If the secondary market insists your lender calls your employer no more than 10 businesses days before closing, would that be considered an underwriting condition? So if a customer pulls out of the transaction before that 10 days - would it be considered withdrawn?

Yes, that would be an underwriting or creditworthiness condition and, if not met, would not be considered approved; therefore, an explicit withdrawal prior to meeting that condition would be a withdrawn application.

iii. Underwriting or creditworthiness conditions. *Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, a determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.*

12. Slide # 51 if a loan closes/settles on 12/31/20, but disburses on 1/5/21, is it reported on 2020's Lar or 2021's Lar?

The loan would be reported on the 2020 LAR. See below.

5. Action taken date—originations. *For covered loan originations, including a preapproval request that leads to an origination by the financial institution, an institution generally reports the closing or account opening date. For covered loan originations that an institution acquires from a party*

that initially received the application, the institution reports either the closing or account opening date, or the date the institution acquired the covered loan from the party that initially received the application. If the disbursement of funds takes place on a date later than the closing or account opening date, the institution may use the date of initial disbursement. For a construction/permanent covered loan, the institution reports either the closing or account opening date, or the date the covered loan converts to the permanent financing. Although an institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of covered loans). **Notwithstanding this flexibility regarding the use of the closing or account opening date in connection with reporting the date action was taken, the institution must report the origination as occurring in the year in which the origination goes to closing or the account is opened.**

13. We are located in Green Bay and have originated business loans to purchase a dwelling near Lambeau and the borrower fixes it up to rent out on game day/weekend, would this be reportable as a Purchase of 2nd Residence?

It depends on whether the borrower occupies the residence. If they purchased it to rent out and not occupy, it's investment property. If they purchased it to occupy and rent out, it's a second home. However, you should consider whether the residence is transitory, like a hotel, and therefore exempt from reporting as a dwelling. See below.

3. Second residences. Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the loan or application relates is or will be used as a second residence. For purposes of § 1003.4(a)(6), a property is a second residence of an applicant or borrower if the property is or will be occupied by the applicant or borrower for a portion of the year and is not the applicant's or borrower's principal residence. For example, if a person purchases a property, occupies the property for a portion of the year, and rents the property for the remainder of the year, the property is a second residence for purposes of § 1003.4(a)(6). Similarly, if a couple occupies a property near their place of employment on weekdays, but the couple returns to their principal residence on weekends, the property near the couple's place of employment is a second residence for purposes of § 1003.4(a)(6).

4. Investment properties. Section 1003.4(a)(6) requires a financial institution to identify whether the property to which the covered loan or application relates is or will be used as an investment property. For purposes of § 1003.4(a)(6), a property is an investment property if the borrower does not, or the applicant will not, occupy the property. For example, if a person purchases a property, does not occupy the property, and generates income by renting the property, the property is an investment property for purposes of § 1003.4(a)(6). Similarly, if a person purchases a property, does not occupy the property, and does not generate income by renting the property, but intends to generate income by selling the property, the property is an investment property for purposes of § 1003.4(a)(6). Section 1003.4(a)(6) requires a financial institution to identify a property as an investment property if the borrower or applicant does not or will not occupy the property, even if the borrower or applicant does not consider the property as owned for investment purposes. For example, if a corporation purchases a property that is a dwelling under § 1003.2(f), that it does not occupy, but that is for the long-term residential use of its employees, the property is an investment property for purposes of § 1003.4(a)(6), even if the corporation considers the property as owned for business purposes rather than investment purposes, does not generate income by renting the property, and does not intend to generate income by selling the property at some point in time. If the property is for transitory use by employees, the property would not be considered a dwelling under § 1003.2(f).

14. If the applicant applies over the phone and does not provide GMI information but you see them later in the process and the applicant chooses to not provide but you visually observe, would you fill out the visual observation section, even though the model form says it is for an application taken in person?

Yes, if the applicant didn't previously tell you in the telephone application that they do not want to provide the information (maybe you forgot to ask) and you see the applicant during the application process (maybe to bring in paystubs or tax returns), you would

then be required to ask for the information. If they state they do not wish to provide it, you would complete it based on visual observation because you saw them face to face during the application process and they had not previously told you they didn't wish to provide the demographic information. However, if during the telephone application, the applicant told you they did not wish to provide the information, you would report that they did not wish to provide the information in a mail or telephone application. See below from Appendix B to Part 1003.

12. If the applicant begins an application by mail, internet, or telephone, and does not provide the requested information on the application but does not check or select the "I do not wish to provide this information" box on the application, and the applicant meets in person with you to complete the application, you must request the applicant's ethnicity, race, and sex. If the applicant does not provide the requested information during the in-person meeting, you must collect the information on the basis of visual observation or surname. If the meeting occurs after the application process is complete, for example, at closing or account opening, you are not required to obtain the applicant's ethnicity, race, and sex.

15. Slides 71-76 Interest Rate. Did the list of fields not required for partial Exemption Institutions change in 2020 to include Interest Rates for 2020's data?

Interest rate is not required for a partially exempt reporter. Directions to the field indicate to report "exempt." Interest rate has been an optional field since the partial exemption rules were established in 2018.

Paragraph 4(a)(21) 1. Interest rate—disclosures. Except for partially exempt transactions under §1003.3(d), §1003.4(a)(21) requires a financial institution to identify the interest rate applicable to the approved application, or to the covered loan at closing or account opening.

16. If a financial institution only relies on and reports one credit score for an application with multiple applicants and the credit score relied on in making the credit decision is the credit score of the co-applicant, can the co-applicant's credit score be reported on the LAR in the credit score data field for the applicant and the co-applicant data field be coded 8888?

The regulation allows you to place the score under the applicant or, alternatively, place it under the co-applicant.

To illustrate, assume a transaction involves one applicant and one co-applicant and that the financial institution obtains or creates two credit scores for the applicant and two credit scores for the co-applicant. Assume further that the financial institution relies on a single credit score that is the lowest, highest, most recent, or average of all of the credit scores obtained or created to make the credit decision for the transaction. The financial institution complies with § 1003.4(a)(15) by reporting that credit score and information about the scoring model used for the applicant and reporting that the requirement is not applicable for the first co-applicant or, at the financial institution's discretion, by reporting the data for the first co-applicant and reporting that the requirement is not applicable for the applicant.

17. If we do not rely on the score what code do we use. Our Freddie Mac loans use a score our bank does not rely on the score.

If you use Freddie Mac underwriting guidelines or AUS in your credit decision and close the loans in your name, and Freddie Mac's criteria use a credit score, then you did rely on a credit score in making the credit decision and are required to report the score. If for portfolio loans you do not use a credit score in making your credit decisions, then you would report the field as "n/a" for portfolio loans.

18. When entering the term and introductory rate period on balloon notes (60x240 mos for example); would we enter 240 for the term and 60 for the intro rate period?

If your term until maturity is 60 months and payments are based on a 240-month amortization, you must report "60" for the term. The method used to determine the

monthly payment is not reported. For fixed-rate loans, there would be no introductory rate period. Only for variable-rate loans would you report an introductory rate period, which would be the period of time until the rate could first change during the loan term.

Covered Loans that do not fully amortize during the maturity term, such as Covered Loans with a balloon payment, are reported using the maturity term rather than the amortization term. Comment 4(a)(25)-1.

19. Just for clarification, a tolerance cure SHOULD be removed and not included in what we are reporting for total points and fees and/or lender credits?

This was only referring to total points and fees, not lender credits. If you cured a portion of the total points and fees to ensure the loan would be a qualified mortgage, you'd report the points and fees less the cure. For lender credits, you'd report the amount of lender credits from the Closing Disclosure. If a corrected Closing Disclosure is provided during the reporting period, you'd use the corrected amount.

For Covered Loans subject to the total points and fees reporting requirement, if a Financial Institution determines that the transaction's total points and fees exceeded the applicable limit and cures the overage pursuant to Regulation Z during the same reporting period in which closing occurred, the Financial Institution reports the revised amount of total points and fees. Comment 4(a)(17)(ii)-2.

3. Corrected disclosures. If the amount of lender credits changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(20) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(20), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

20. On pages 96 you discussed total loan costs; did you say you subtract any cured amount in that total?

No, the reference to cures was only in reference to total points and fees and cures related to qualified mortgage standards. See question 19 above. For Total Loan Costs, you report the amount from the Closing Disclosure. If a corrected Closing Disclosure is provided during the reporting year, you use the amount on corrected disclosures.

3. Corrected disclosures. If the amount of lender credits changes because a financial institution provides a corrected version of the disclosures required under Regulation Z, 12 CFR 1026.19(f), pursuant to 12 CFR 1026.19(f)(2), the financial institution complies with § 1003.4(a)(20) by reporting the corrected amount, provided that the corrected disclosure was provided to the borrower prior to the end of the reporting period in which closing occurs. For purposes of § 1003.4(a)(20), the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR 1026.38(a)(3)(i). For example, in the case of a financial institution's annual loan/application register submission made pursuant to § 1003.5(a)(1), if the financial institution provides a corrected disclosure to the borrower to reflect a refund made pursuant to Regulation Z, 12 CFR 1026.19(f)(2)(v), the financial institution reports the corrected amount of lender credits only if the corrected disclosure was provided to the borrower prior to the end of the calendar year in which closing occurs.

21. If we have a non-originated loan, would it be expected to have all of the source documents? Property related fields are notoriously under-documented in non-originated files.

You would be required to have source documents or support for the best information available for all fields that are applicable to nonoriginated applications. Property location

information can be marked “n/a” if the property location is not known before the application is denied, withdrawn, or closed for incompleteness.

Enter “NA” in each of the property address fields for: Covered loans or applications if the property address of the property securing the covered loan is not known (e.g., the property did not have a property address at closing, or the property address was not provided to the institution before the application was denied, withdrawn, or closed for incompleteness), Comment 4(a)(9)(i)-3;