Frequently Asked Compliance Question
June 19, 2015

Question

A borrower intends to destroy the residential dwelling currently in place at a piece of property that is owned and replace it with a commercial building. Would a Construction to Permanent mortgage loan request to convert or construct a commercial building be reportable under the Home Mortgage Disclosure Act ("HMDA")?

Short Answer

This loan would not be reported under HMDA. The purpose of HMDA is to show whether lenders are serving the housing needs of the community. As HMDA is a purpose-driven regulation, in order to collect relevant information a lender is required to obtain the purpose of the loan. In this scenario, the purpose of the loan is not to purchase a residential dwelling, improve a residential dwelling or refinance a residential dwelling. The purpose is to construct a commercial building. Therefore, the loan would not be HMDA reportable.

Answer Details

In order to collect relevant information to determine HMDA applicability, a lender is required to obtain the purpose of the loan. In doing so, a lender may rely on the oral or written statement of an applicant regarding the proposed purpose of the loan. A loan is reportable if it fits the definition of home purchase loan, home improvement loan or refinance:

- Home Purchase Loan: Loan secured by and made for the purpose of purchasing a dwelling, which is defined as a residential structure.

- Home Improvement Loan: Loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located; and a non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan.

- Refinance: A new obligation that satisfies and replaces an existing obligation by the same borrower, in which both the original obligation and the new obligation are dwelling-secured loans.

While there is a dwelling on the property that the construction is being performed upon, if the documented purpose of the loan is to destroy the dwelling to make way for a commercial building then this loan would not fall under the definition of a home purchase loan, home improvement loan or refinance and therefore would not be HMDA reportable.

If you are interested in an audit or assistance with HMDA, please contact Brian Shea at bshea@wolfandco.com or Erica Torres at etorres@wolfandco.com.