

# Bulletin

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NUMBER: 2013-16

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TO: Freddie Mac Sellers

August 20, 2013

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**SUBJECT: UPDATES IN RESPONSE TO THE CFPB FINAL RULE ON ABILITY TO REPAY**

**(This is a reissuance of Bulletin 2013-16, with a correction to the section titled “Government Mortgages” made on October 1, 2013.)**

This *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin updates our requirements in response to the final rule of the Consumer Financial Protection Bureau (CFPB) implementing the ability to repay provisions (“ATR”) under the Truth-in-Lending Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“CFPB final rule”). The updated requirements include:

- Retiring Mortgages with original maturities in excess of 30 years as eligible Freddie Mac Mortgages
- Retiring Prepayment Penalty Mortgages as eligible Freddie Mac Mortgages
- Introducing new points and fees thresholds to replace the existing Freddie Mac 5% threshold
- Updating our requirements for Higher-Priced Mortgage Loans (HPMLs) for the following Mortgages:
  - Freddie Mac Relief Refinance Mortgages<sup>SM</sup>
  - ARMs with Initial Periods of 7 or 10 years

In the context of the CFPB final rule, we are also providing Sellers with additional information about Mortgages evaluated through Loan Prospector®, our representation and warranty framework, government Mortgages and ULDD Data Points.

## EFFECTIVE DATE

The changes announced in this Bulletin are effective for Mortgages with Application Received Dates on or after **January 10, 2014**.

In addition, Mortgages with original maturities in excess of 30 years and Prepayment Penalty Mortgages must have a Freddie Mac Settlement Date on or before July 31, 2014.

## BACKGROUND

On January 10, 2013, the CFPB final rule was issued, which generally requires a Seller to make a reasonable, good faith determination of a Borrower’s ability to repay before originating a Mortgage and establishes certain protections from liability for qualified mortgages. The CFPB final rule includes amendments subsequently released by the CFPB on May 29, 2013 and July 10, 2013 and will be effective for Mortgages with applications received on or after January 10, 2014.

At the direction of the Federal Housing Finance Agency (FHFA), Freddie Mac and Fannie Mae have worked together in an effort to align updated requirements in response to the CFPB final rule.

## **ELIGIBILITY REQUIREMENTS**

### **ATR covered Mortgages**

In our May 6, 2013 Industry Letter and July 2, 2013 Industry Letter, Freddie Mac notified Sellers that Mortgages with Applications Received Dates on or after January 10, 2014 must meet the following requirements to be eligible for sale to Freddie Mac:

- Be fully amortizing (e.g., the Mortgages must not be interest-only or have potential for Negative Amortization)
- Have terms not exceeding 30 years (e.g., no 40-year fixed-rate Mortgages)
- Have total points and fees not exceeding 3% of the total loan amount (or such other applicable limits for lower balance Mortgages) as specified under the Truth-in-Lending Act and its implementing regulations, 12 C.F.R. Section 1026.43(e)(3)

These three eligibility requirements have been added to the Guide, and apply to Mortgages with Application Received Dates on or after January 10, 2014 that are subject to the CFPB final rule (“ATR covered Mortgages”). These requirements do not apply to assumptions or modifications of Freddie Mac-owned or guaranteed Mortgages.

### **ATR exempt Mortgages**

Certain Mortgages are exempt from Regulation Z, 12 C.F.R. 1026.43(a) or are not subject to the Truth-in-Lending Act (“ATR exempt Mortgages”). As stated in the July 2, 2013 Industry Letter, Freddie Mac will continue to purchase these Mortgages, provided they meet all requirements in the Guide and other Purchase Documents, including the amortization and term requirements referenced above. Refer to the “Points and Fees” section of this Bulletin for thresholds associated with ATR exempt Mortgages.

Notes:

- Freddie Mac will also purchase “non-standard” to “standard” refinance Mortgages (as defined under 12 C.F.R. 1026.43(d) of Regulation Z) provided they meet all requirements in the Guide and other Purchase Documents, including all three eligibility requirements referenced above.
- Although Mortgages that meet the requirements of Guide Section 22.10(a), *Living Trusts*, may be exempt from ATR under the Truth-in-Lending Act and its implementing regulations, such Mortgages will not be eligible for sale to Freddie Mac unless they meet all requirements in the Guide and other Purchase Documents, including all three eligibility requirements referenced above.

### **Determination of regulatory compliance**

Freddie Mac will not make the determination of whether a Mortgage is exempt from, or complies with, the CFPB final rule or whether a Seller’s designation of the status of a Mortgage under the CFPB final rule is correct. These determinations of compliance with the CFPB final rule and other applicable laws are the Seller’s responsibility.

## **MORTGAGES WITH ORIGINAL MATURITIES IN EXCESS OF 30 YEARS**

Effective for Mortgages with Application Received Dates on or after January 10, 2014, Mortgages with original maturities in excess of 30 years are not eligible for sale to Freddie Mac. Freddie Mac will continue to purchase Mortgages with original maturities in excess of 30 years and Application Received Dates prior to January 10, 2014, provided that they have Freddie Mac Settlement Dates on or before July 31, 2014.

We are therefore revising Home Possible Mortgage<sup>®</sup> requirements to reflect this change.

Note: The Seller must structure any interim construction financing to be exempt from the ability to repay provisions of Regulation Z, Section 1026.43(a)(3) so that the Mortgage term does not exceed thirty years.

All applicable Guide sections and Guide Exhibit 17S, *Available Mortgage Products*, have been updated to reflect this change. Exhibit 19, *Postsettlement Delivery Fees*, will be updated with a future Bulletin to reflect this change.

Loan Prospector feedback messages will be updated at a later date.

## **PREPAYMENT PENALTY MORTGAGES**

Effective for Mortgages with Application Received Dates on or after January 10, 2014, Prepayment Penalty Mortgages are not eligible for sale to Freddie Mac. Freddie Mac will continue to purchase Prepayment Penalty Mortgages with Application Received Dates prior to January 10, 2014, provided that they have Freddie Mac Settlement Dates on or before July 31, 2014.

All applicable Guide sections, exhibits and the Glossary have been updated to reflect this change.

## **POINTS AND FEES**

### **New thresholds**

We are updating our requirements for points and fees as follows:

- For ATR covered Mortgages, the points and fees must not exceed 3% of the total loan amount (or such other applicable limits for lower balance Mortgages) as specified under the Truth-in-Lending Act and its implementing regulations, 12 C.F.R. 1026.43(e)(3). Sellers must use the points and fees calculation that is required for qualified mortgages under the Truth-in-Lending Act and its implementing regulations, 12 C.F.R. 1026.32(b) to determine compliance with applicable requirements.
- For ATR exempt Mortgages, the points and fees must not exceed 5% of the total loan amount. Sellers must use the points and fees calculation that is required for high-cost Mortgages under the Home Ownership and Equity Protection Act of 1994 (HOEPA) and its implementing regulations, 12 C.F.R. 1026.32(b).

We are replacing the existing Freddie Mac 5% points and fees limitation under Section 22.32, *Predatory Lending Practices*, with the new points and fees thresholds.

We are adding new Section 22.37, *Points and Fees Limitation*, and updating Sections 22.1, *Overview*, and 22.32 to reflect these changes.

We are also updating Section 22.33, *HOEPA Mortgages*, and additional applicable Guide sections for consistency with the new statutory thresholds under HOEPA as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

### **Treatment of Freddie Mac delivery fees**

Sellers may decide to recover the costs of delivery fees by either including the delivery fees in the calculation of points and fees or in the interest rate. If a Seller chooses to pass some or all of those delivery fees through to Borrowers, it is the Seller's responsibility to comply with applicable requirements to determine the total amount of points and fees and annual percentage rate consistent with our eligibility requirements.

## **HIGHER-PRICED MORTGAGE LOANS (HPMLS)**

### **HPML Relief Refinance Mortgages**

We are revising the eligibility requirements for Relief Refinance Mortgages – Same Servicer and Relief Refinance Mortgages – Open Access that are HPMLS. The revised requirements include, but are not limited to, the following:

- Minimum Indicator Score of 620
- Maximum debt payment-to-income ratio of 45%
- Verification of income source and amount

Loan Prospector will not be updated to verify the revised eligibility requirements for Relief Refinance Mortgages – Open Access. Therefore, Sellers must confirm that the revised requirements are met, regardless of the Loan Prospector Risk Class.

Guide Chapters A24, *Freddie Mac Relief Refinance Mortgages<sup>SM</sup> – Same Servicer*, and B24, *Freddie Mac Relief Refinance Mortgages<sup>SM</sup> – Open Access*, and Section 22.35, *Higher-Priced Mortgage Loans*, have been updated to reflect these changes.

### **HPML qualifying rate requirements for ARMs with Initial Periods of 7 or 10 years**

For all HPMLs that are ARMs with Initial Periods of 7 or 10 years (i.e., 7/1, 10/1, 7/6-month and 10/6-month ARMs), the Borrower must be qualified using the greater of the Note Rate or the fully-indexed rate.

Sections 22.35, 30.16, *Underwriting Requirements*, and 30.18, *Other Information Related to ARMs*, have been updated to reflect this change.

Loan Prospector will be updated at a later date.

## **ADDITIONAL INFORMATION**

### **Mortgages evaluated through Loan Prospector**

Sellers acknowledge in Guide Exhibit 15, *Loan Prospector<sup>®</sup> User Agreement*, that Loan Prospector does not analyze compliance with laws, regulations or ordinances, or with any requirements imposed by a regulator. Sellers are solely responsible for determining whether a Mortgage processed through Loan Prospector complies with applicable laws and regulations, including the CFPB final rule.

### **Representation and warranty framework reminder**

The representation and warranty framework announced in Bulletin 2012-18 continues to apply to Mortgages delivered to Freddie Mac that meet the requirements of Section 6.14, *Enforcement of Representations and Warranties Related to Underwriting of the Borrower, Mortgaged Premises and Project*. At this time, we are not making any changes to the framework based on the CFPB final rule.

As a reminder, the representation and warranty framework only applies to the sections listed in the table in Section 6.14(a). For Guide provisions not listed, such as points and fees requirements, the Seller continues to be responsible for representations and warranties for the life of the loan.

As an additional reminder, Section 6.14(c) states that the Seller is responsible for compliance with all laws, regulations and orders for the life of the loan, including, but not limited to, ATR under the Truth-in-Lending Act and the CFPB final rule implementing those provisions. (See Sections 6.2, *Compliance with Applicable Law*, and 22.28, *Compliance with Law*.)

Within the context of the representation and warranty framework, Freddie Mac will adjust its quality control reviews as a result of the new eligibility requirements. Freddie Mac will communicate these changes in September.

### **Government Mortgages**

***(The language in bold print in this paragraph reflects a correction made on October 1, 2013 regarding government Mortgages that are eligible for sale to Freddie Mac.)*** Freddie Mac will continue to purchase government Mortgages that meet existing requirements as defined in Chapter 35, *Eligibility Requirements for Special Housing Initiatives*, provided they meet the new eligibility requirements in the “ATR covered Mortgages” or “**ATR exempt Mortgages**” section of this Bulletin.

Note: If FHA or other agency guidelines related to government mortgages are published that affect the CFPB final rule, we will evaluate the impacts to our requirements at that time.

### **ULDD Data Points**

We are continuing to assess potential new delivery data points as part of future Uniform Loan Delivery Dataset (ULDD) requirements that will help determine if Mortgages meet points and fees thresholds and the other new eligibility requirements. Any new ULDD Data Point requirements will not be included in Phase 2, and will be announced at a future date. As with all new ULDD requirements, we will provide Sellers with sufficient lead time to update their systems and processes for compliance with our requirements.

## NOTICE OF CHANGES TO NEGOTIATED PROVISIONS

Pursuant to Section 12.3(d), negotiated provisions in Master Agreements and/or Master Commitments are amended with effective dates as announced in this Bulletin.

## ADDITIONAL RESOURCES AND TRAINING MATERIALS

Additional resources related to the updated requirements referenced in this Bulletin can be found at our [Freddie Mac New Mortgage Eligibility Criteria](#) web page.

Sellers are also encouraged to visit [Freddie Mac's Learning Center](#) to view updated training materials supporting the changes outlined in this Bulletin.

## REVISIONS TO THE GUIDE

The revisions included in this Bulletin impact the following:

- Chapters 6, 9, 13, A13, B15, 17, 22, 24, A24, B24, C24, 27, 30, B33, F33, I33 and A34
- Exhibits 17S and 22
- Glossary

For a detailed list of the Guide updates associated with this Bulletin and the topics with which they correspond, refer to the Bulletin 2013-16 (Updates in Response to the CFPB Final Rule on Ability to Repay) Guide Updates Spreadsheet available at

<http://www.freddiemac.com/sell/guide/spreadsheets.html>.

## CONCLUSION

If you have any questions about the changes announced in this Bulletin, please contact your Freddie Mac representative or call (800) FREDDIE.

Sincerely,



Laurie A. Redmond  
Vice President  
Offerings Effectiveness