Freddie Mac
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Industry Letter

TO: All Freddie Mac Sellers and Servicers February 12, 2009

SUBJECT: Anti-predatory Lending Requirements

As announced on October 1, 2013, Freddie Mac has withdrawn its guidance in this Industry Letter contained in the "Excessive Points and Fees" and the "Pass-Through Of Freddie Mac Delivery Fees" sections, including instructions on bona fide discount points. Please see Freddie Mac's October 1, 2013 Industry Letter and Guide Bulletin 2013-16 for information regarding Freddie Mac requirements relating to points and fees.

As you know, Freddie Mac promotes responsible lending and has implemented comprehensive requirements in our *Single-Family Seller Servicer Guide* (Guide) designed to combat predatory lending practices. We also require our Seller/Servicers to have policies and procedures designed to identify and avoid such practices.

This Industry Letter serves to remind Seller/Servicers about our anti-predatory lending (APL) requirements set forth in our Guide and provides additional guidance by:

- Providing greater detail about the excessive points and fees threshold that applies to all Mortgages secured by Primary Residences
- Reminding Seller/Servicers that certain Freddie Mac postsettlement delivery fees, if passed on to the Borrower at closing, are included in the points and fees calculations under the federal Home Ownership and Equity Protection Act (HOEPA) of 1994 and State APL laws
- Restating that no Mortgage is eligible for delivery to Freddie Mac if it is a high-cost home loan in any of the 14 States specified in our Guide, regardless of whether the Seller or third-party originator holds a federal or State charter
- Providing clarification that if Freddie Mac purchases a high-cost loan under HOEPA or a high-cost home loan secured by property located in one of the 14 specified States, the Mortgage is subject to repurchase regardless of any attempt to cure
- Reminding Seller/Servicers that the Borrower's rescission rights under the Truth in Lending Act must expire before a Mortgage is delivered for sale to Freddie Mac
- Informing Seller/Servicers of our expectations about their controls for preventing the sale of high-cost home loans to Freddie Mac

Freddie Mac's APL eligibility requirements, as well as the corresponding Guide sections, appear in a chart on page 5 of this Industry Letter. A more complete reference guide to our APL policies is available at http://www.freddiemac.com/learn/pdfs/uw/Pred_requirements.pdf

Mortgages that do not comply with our requirements are not eligible for sale to Freddie Mac and are subject to repurchase.

Freddie Mac conducts on-site reviews of Seller/Servicers and performs postfunding quality control reviews to verify that the Mortgages we purchase comply with our APL requirements. (See Guide Section 46.1.) On the basis of the results from some of our postfunding quality control reviews and

Seller/Servicer on-site reviews over the past few months, we believe that some Seller/Servicers may benefit from the following additional guidance with respect to some of our requirements.

EXCESSIVE POINTS AND FEES

Section 22.32 states that Mortgages secured by Primary Residences are ineligible for sale to Freddie Mac if they have points and fees that exceed 5% of the Mortgage amount (or $1,000 for Mortgage amounts of $20,000 or less).

This requirement:

- Applies to Mortgages secured by Primary Residences, but not to Investment Properties or second homes
- Applies to purchase transaction Mortgages as well as refinance Mortgages
- Applies to Mortgages secured by property in any State

Charges included in the points and fees calculation

Points and fees for purposes of this threshold **include:**

- Origination fees, underwriting fees, broker fees, and finder's fees
- Charges imposed as a condition for making the mortgage and paid to the Seller or a third party

Charges excluded from the points and fees calculation

Points and fees **do not include:**

- Bona fide discount points, which are loan discount points that:
    - Are knowingly paid by the Borrower
    - Are funded through any source for the purpose of reducing the interest rate on the mortgage
    - Result in a meaningful reduction of the interest rate on the mortgage, provided that, prior to discount, the rate was consistent with current industry norms based on the credit characteristics of the mortgage
        - It will be presumed that a point is a bona fide discount point if it reduces the interest rate by a minimum of 25 basis points or ¼ of a point provided all other terms of the loan remain the same
        - No more than two bona fide discount points will be excluded from the points and fees calculation
- Fees for actual services rendered, such as attorney fees, notary fees, appraisal, credit report, survey, title examination and extract, flood and tax certification, and home inspection
- Mortgage insurance
- Credit-risk price adjustments, which include:
    - Risk-based pricing (e.g., A-minus delivery fees or Indicator Score/Loan-to-Value fees)
    - Market condition delivery fees
    - Fees based on the collateral type (such as Manufactured Homes)
    - Fees based on the type of transaction or offering (such as cash-out refinances)
- Cost of title, hazard and flood insurance policies
- State and local transfer fees and taxes
- Tax and insurance premium escrow deposits
- Miscellaneous fees and charges that do not exceed 0.25% of the mortgage amount

Please note that the Section 22.32 points and fees requirement treats some fees differently from the way they are treated under HOEPA and under State high-cost home loan laws. For instance, as mentioned above, credit-risk price adjustments do not count toward the 5% threshold, but they do count when calculating the points and fees under HOEPA and State APL laws.

If you have a question about whether a particular fee counts toward the 5% points and fees threshold, please ask your Freddie Mac representative or call (800) FREDDIE.

PASS-THROUGH OF FREDDIE MAC DELIVERY FEES

Sections 24.2 and 22.33 state that Mortgages that exceed the HOEPA thresholds are ineligible for purchase by Freddie Mac. In addition, Section 22.18.1 states that high-cost home loans, or similarly designated loans, in 14 specified States are ineligible for purchase by Freddie Mac.

Under HOEPA and many State APL laws, charges imposed by a secondary market purchaser for purchasing a particular Mortgage are included toward the points and fees threshold if the Borrower pays the amount of these charges:

- In fees at or before closing,
- As an addition to the amount financed, or
- As a deduction from the loan proceeds

Thus, if passed on to the Borrower at or before closing, Freddie Mac's postsettlement delivery fees are counted toward the total points and fees for purposes of determining whether the mortgage is a high-cost loan under HOEPA. These fees are also counted under the APL laws of some of the 14 States specified in Section 22.18.1. (By contrast, as we pointed out above, the same types of fees – such as for an A-minus Mortgage or a cash-out refinance – do not count toward the separate 5% excessive points and fees limit in Section 22.32.) The inclusion of these fees (in addition to other fees charged by the originator) could result in a particular Mortgage being a high-cost loan under HOEPA or a high-cost home loan in one of the 14 specified States. In that case, the Mortgage is not eligible for purchase by Freddie Mac.

An originator may elect to take different approaches with respect to delivery fees, including reducing origination fees or not passing on all of the delivery fees to the Borrower. If the originator chooses to pass all or part of these fees on to the Borrower in the interest rate, the originator must determine, prior to delivering the Mortgage to Freddie Mac, that the Borrower has the capacity, as provided in the Guide, to repay the Mortgage at the higher interest rate.

CLAIMS OF PREEMPTION OR EXEMPTION

A Mortgage with points and fees or an annual percentage rate (APR) that triggers the high-cost home loan threshold in one of the 14 States specified in Section 22.18.1 of the Guide is ineligible for sale to Freddie Mac, regardless of whether the Seller or third-party originator enjoys preemption based on its charter; or whether the State law exempts originators with certain types of charters; or whether the State law exempts mortgages based on their purchase by Freddie Mac or other entities.

CLAIMS OF POST-PURCHASE CURE

Some State APL laws in the 14 States specified in Section 22.18.1 (for example, those in New Jersey and Georgia) allow originators to cure the high-cost home loan status of a mortgage under certain circumstances. A high-cost home loan in one of these 14 States is ineligible for sale to Freddie Mac regardless of whether the applicable law has a cure provision, and regardless of any steps the Seller or third-party originator takes to attempt to cure the Mortgage. Such a Mortgage is subject to repurchase by the Seller.

EXPIRATION OF APPLICABLE RESCISSION PERIODS

Section 22.28 states that a Seller may not deliver any Mortgage to Freddie Mac for purchase until all applicable rights to rescind have expired, and the Seller is certain that the Borrower has not exercised any right to rescind the Mortgage. The federal Truth in Lending Act ("TILA") requires that lenders provide Borrowers with a right of rescission for certain refinances that expires at midnight on the third business day following the last to occur of the following three events:

- Signing of the loan documents
- Receipt by the Borrower of all TILA disclosures
- Notice to the Borrower of the right of rescission

Although these events usually occur on the same day, delay in one event (for instance, delivery of the notice) will delay the beginning of the three-day period.

TILA has very specific provisions regarding the rescission right – for instance, every day is a business day except for Sundays and federal holidays, and notice may be mailed to the lender at any time prior to expiration of the period. For example, if a mortgage closed and all three conditions to begin the rescission period were met on Thursday, 1/15/2009, the first business day would be Friday, 1/16; the second business day would be Saturday, 1/17; but the rescission period would not expire until midnight on Tuesday, 1/20, which is the third business day, because the prior day (Monday, 1/19) was a federal holiday. If the Borrower mailed a letter requesting rescission late on Tuesday, the originator may not receive notice that the Borrower is rescinding the mortgage until Thursday, 1/22, or later. In this example, the rescission notice might not be received for more than a week following loan closing. Sellers must verify that the Borrower did not rescind the Mortgage under TILA before escrow is released or the Mortgage is delivered to Freddie Mac.

POLICES AND PROCEDURES TO PREVENT SALE OF HIGH-COST HOME LOANS TO FREDDIE MAC

Sections 22.18.1 and 22.32 direct Seller/Servicers to have policies and procedures to prevent the delivery of ineligible high-cost Mortgages to Freddie Mac and to identify and avoid predatory lending practices. Freddie Mac reviews these policies and procedures as part of our regular on-site reviews of Seller/Servicers and identifies risks, and recommends control enhancements, as appropriate. While Seller/Servicers need to determine which controls represent the best solution for their company, we generally expect Seller/Servicers to have all of the following controls:

- A written APL policy
- Staff with knowledge of federal APL requirements, State APL requirements (for every State where the Seller/Servicer originates or sources mortgages), and Freddie Mac APL requirements
- A process to monitor changes to laws, regulations and Freddie Mac requirements
- A process to review points and fees to ensure the eligibility of a Mortgage for sale to Freddie Mac prior to the sale of the Mortgage

REVIEW GUIDE SECTIONS

For a more detailed understanding of Freddie Mac's eligibility requirements related to our anti-predatory lending requirements, and their contractual responsibilities, Seller/Servicers should consult the following sections in the Guide:

Anti-predatory Lending Requirement	Guide Section
No Mortgage can exceed the points and fees or Annual Percentage Rate (APR) thresholds of the HOEPA. The scope of our requirement is broader than HOEPA in that our requirement includes purchase money as well as refinance Mortgage.	24.2, 22.33
No Mortgage can be a high-cost home loan or similarly designated Mortgage in any of 14 specified States	22.18.1
For Mortgages secured by Primary Residences, total points and fees cannot exceed 5% of loan amount	22.32
For Primary Residences, Mortgages with prepayment penalties must: ■ Benefit the Borrower (such as a rate or fee reduction in exchange for the prepayment penalty) ■ Be made only if the Borrower is offered a Mortgage without a prepayment penalty ■ Provide for adequate disclosure of the prepayment penalty to the Borrower In addition, the prepayment penalty: ■ May not be imposed upon default or foreclosure ■ Must not have a term exceeding 3 years	B33.4.1
No single-premium credit insurance	22.31
The Borrower must have the capacity to repay the Mortgage	37.12
Servicers must provide monthly full-file credit reporting	55.4
The Borrower cannot be steered to a higher-priced product than a product for which the Borrower qualifies	22.32
The Mortgage and its servicing must comply with all applicable federal, State and local laws, ordinances, regulations and orders, including those that pertain to APL and fair lending, and any applicable rescission period must have expired.	6.2, 22.28
No Mortgage can require the Borrower to arbitrate any dispute relating to the Mortgage	22.34

CONCLUSION

We recognize that you work hard to promote responsible lending practices. We look forward to continuing to work with you on these issues. If you have any questions about our APL requirements or any of the requirements discussed in this Bulletin, please contact your Freddie Mac representative or call (800) FREDDIE.

We appreciate your attention to these very important matters.

Sincerely,

Patricia J. McClung
Vice President
Offerings Management