
To: Freddie Mac Sellers and Servicers

October 1, 2013

SUBJECT: INFORMATION RELATING TO THE CFPB FINAL RULE ON ABILITY TO REPAY

On August 20, 2013, Freddie Mac issued *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin 2013-16, which announced its new purchase eligibility requirements in response to the final rule issued by the Consumer Financial Protection Bureau (CFPB) implementing the ability to repay provisions under the Truth-in-Lending Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“CFPB final rule”).

At the direction of the Federal Housing Finance Agency, Freddie Mac and Fannie Mae have worked together to establish the new purchase eligibility requirements announced in Bulletin 2013-16. We also have worked together in an effort to align guidance on quality control practices and principles in response to the new purchase eligibility requirements.

This Industry Letter provides information on the following topics within the context of the new purchase eligibility requirements:

- Impacts to our quality control practices
- Points and fees
- Documentation and record retention

QUALITY CONTROL PRACTICES

No changes to quality control processes

Freddie Mac recognizes the challenges Sellers face in implementing the wide range of regulatory requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Additionally, we are aware that implementation of the points and fees thresholds described in the CFPB final rule may be particularly challenging for the mortgage finance industry. Accordingly, during an initial transitional period (the duration of which is uncertain), we are not making any changes to our quality control sampling methodology, review scope, documentation requirements or repurchase processes related to the purchase eligibility requirements announced in Bulletin 2013-16.

Transitional repurchase practices

During the initial transitional period, Freddie Mac will not issue repurchase requests related to the new points and fees eligibility requirements described in Bulletin 2013-16 unless a court, regulator, or other authoritative body determines that the Mortgage fails to meet the applicable points and fees threshold in the CFPB final rule.

Consistent with current practices, Freddie Mac will issue a repurchase request if a Mortgage is found to be a high-cost Mortgage under the Home Ownership and Equity Protection Act of 1994 (HOEPA), as amended, or under any of the 14 State anti-predatory lending laws specified in Guide Section 22.18.1, *State Anti-Predatory Lending Laws and Regulations*.

In addition, we will issue a repurchase request if we determine through established delivery or quality control review processes that any Mortgage has ineligible term or amortization provisions.

Further, we will issue a repurchase request if a court, regulator or other authoritative body determines that a lender originated a Mortgage without determining the Borrower's ability to repay as required under Regulation Z.

On-site operational reviews

As part of our regular on-site operational reviews, we may require that Seller/Service providers provide evidence of origination and process controls that are designed to support compliance with the points and fees eligibility requirements.

Future changes to quality control process

After the initial transitional period, Freddie Mac may implement additional quality control measures relating to the new points and fees eligibility requirements. As always, we will announce the scope and timing of any changes before implementing them.

In the meantime, information about our current postfunding quality control processes, including our quality control sampling methodology and anti-predatory lending compliance sampling process, can be found in our September 11, 2012 and October 19, 2012 Industry Letters.

POINTS AND FEES

Compliance with CFPB final rule and State laws

Freddie Mac recognizes the complexities in implementing the CFPB final rule, including the definition and calculation of points and fees. We encourage Sellers to review the resources and guidance provided by the CFPB on its [regulatory implementation page](#) and to stay informed on further clarifications that the CFPB may issue on these matters.

Some States have adopted rules and regulations that may be more restrictive than the CFPB final rule. As required by the Guide, in originating Mortgages for sale to Freddie Mac, Sellers must comply with all applicable laws.

Treatment of Freddie Mac delivery fees

As noted in Bulletin 2013-16, Sellers may decide to recover the costs of delivery fees from the Borrower by including some or all of the delivery fees in the interest rate and/or by passing some or all of these delivery fees through to the Borrower by including the fees on the closing settlement statement. Including delivery fees in the interest rate may impact whether a Mortgage is a Higher-Priced Mortgage Loan. Passing through delivery fees to the Borrower on the closing settlement statement may impact whether a Mortgage meets the applicable thresholds for points and fees and it could also impact the annual percentage rate (APR).

As a reminder, it is the Seller's responsibility to comply with applicable requirements to determine the total amount of points and fees and APR consistent with our eligibility requirements.

Withdrawal of prior guidance

In light of the CFPB final rule, some of the direction we provided in our February 12, 2009 Industry Letter on anti-predatory lending requirements is no longer operative. Accordingly, we are withdrawing the guidance contained in the "Excessive Points and Fees" section (including the "Charges Included in the Points and Fees Calculation" and "Charges Excluded from the Points and Fees Calculation" subsections) and the "Pass-Through of Freddie Mac Delivery Fees" section of that Industry Letter, including the instructions on bona fide discount points.

DOCUMENTATION AND RECORD RETENTION

At this time, we are not requiring our Seller/Servicers to maintain any additional documentation in the Mortgage file beyond those required in Sections 47.1, *Mortgage File*, and 52.1, *Contents*. Additionally, we are not making any changes to our record retention requirements at this time, and the document retention requirements in Guide Chapter 52, *Mortgage File Retention*, continue to be applicable. However, since a Borrower may assert the lender's noncompliance with the ability to repay provisions of the CFPB final rule as a defense to a foreclosure action, Seller/Servicers may need to demonstrate their compliance with the new eligibility requirements long after the loan origination. For this reason, Freddie Mac recommends that Seller/Servicers retain in their Mortgage files all materials that might be necessary to document compliance with the new eligibility requirements.

CONCLUSION

Seller/Servicers that have questions about this announcement should contact their Freddie Mac representative or call (800) FREDDIE.

Sincerely,

A handwritten signature in cursive script that reads "Laurie A. Redmond". The signature is written in black ink on a white background.

Laurie A. Redmond
Vice President
Offerings Effectiveness