Announcement 09-24 *July 10, 2009*

Amends these Guides: Selling and Servicing

Delivery of Higher-Priced Mortgage Loans, Revised Qualifying Rate Requirements, Assessment of Late Charges, Clarifications to Points and Fees Limitation, and Updates to Reporting under the Home Mortgage Disclosure Act

Introduction

This Announcement updates or clarifies the following:

- Delivery of higher-priced mortgage loans in accordance with 2008 amendments to Regulation Z
- Qualifying rate requirements for certain ARM loans, loans subject to temporary interest rate buydowns, and step-rate mortgage loans
- Policy regarding late charges and application of mortgage payments
- Policy regarding points and fees limitation
- Delivery requirements in response to recent Home Mortgage Disclosure Act amendments

Delivery of Higher-Priced Mortgage Loans in Accordance with 2008 Regulation Z Amendments

***Selling Guide*, A2-2-01, Contractual Representations and Warranties; A2-2.1-01, Selling Representations and Warranties; and A3-2-02, Responsible Lending Practices**

In July 2008, the Board of Governors of the Federal Reserve System issued a final rule amending Regulation Z, the implementing regulation of the Truth in Lending Act. As stated in the *Selling Guide*, lenders (and any subservicer or third-party originator it uses) must be aware of and in full compliance with all federal, state, and local laws that apply to any of its origination, selling, or servicing practices or other business practices that may effect Fannie Mae. This existing representation and warranty covers any amendments to Regulation Z, including the 2008 amendments.

The 2008 Regulation Z amendments provide for a new category of loans referred to as "higher-priced mortgage loans" (HPML). An HPML is a loan secured by a borrower's principal residence that exceeds the annual percentage rate (APR) thresholds, as defined in Regulation Z, thereby triggering additional qualification requirements and consumer protection provisions. Fannie Mae will purchase mortgage loans that meet the definition of an HPML under Regulation Z, provided the following requirements are met:

Category	Update
Representation and Warranty	Lenders represent and warrant when they sell an HPML (as defined by Regulation Z) to Fannie Mae that the mortgage complies in all respects with Regulation Z requirements for HPMLs, including the underwriting and consumer protection requirements.
Verification of Ability to Repay	Lenders must verify the borrower's ability to repay the mortgage in accordance with the requirements of the 2008 Regulation Z amendments. Borrower income, assets, and obligations must be verified. Fannie Mae typically requires such verifications; however, by way of example, if lenders identify a Refi Plus™ loan as an HPML, lenders must ensure the Regulation Z requirements are met with respect to income and asset documentation, including a review of the borrower's current obligations even though such verification is not required in accordance with existing Refi Plus eligibility guidelines.

Lenders must consult with their own legal counsel or regulatory compliance expert to determine the steps necessary to ensure compliance with the ability to repay and consumer protection provisions applicable to HPMLs.

Fannie Mae has implemented a quality control process to assess compliance with the HPML requirements outlined above. Fannie Mae reserves the right to take action against the lender for any identified instance of noncompliance, including requesting repurchase of the mortgage loan.

Revised Qualifying Rate Requirements

***Selling Guide*, B3-6-04, Borrower's Monthly Housing Expense for Qualifying Purposes**

Fannie Mae is updating qualifying rate requirements for the following loan types:

Mortgage Type	Qualifying Rate
5/1 ARMs	The lender must qualify the borrower based on the greater of the note rate or the fully indexed rate, considering the borrower’s current obligations and other mortgage-related obligations (PITIA).
Mortgage Loans Subject to Temporary Interest Rate Buydowns	The lender must qualify the borrower based on the greater of the note rate or the fully indexed rate, as applicable, considering the borrower’s current obligations and other mortgage-related obligations, i.e., PITIA.
Step-Rate Mortgage Loans (e.g., Two-Step® ARMs)	The lender must qualify the borrower based on the fully indexed rate if the payment is fixed for less than seven years, considering the borrower’s current obligations and other mortgage-related obligations, i.e., PITIA.

Updated Late Charge Assessment Policy

***Servicing Guide*, Part I, Section 203.03, Late Charges; and Part III, Section 101.03, Payment Shortages**

The amendments to Regulation Z also prohibit the imposition of any late fee or delinquency charge in connection with a payment when the only delinquency is attributed to late fees or delinquency charges assessed on a prior payment, and the payment is otherwise a full payment for the applicable period paid on its due date or within any grace period. While the amendments to Regulation Z apply only to mortgage loans secured by the borrower’s principal residence, Fannie Mae is applying these provisions to all mortgage loans *regardless of occupancy*.

Current *Servicing Guide* Provisions	Update
Part I, Section 203.03, Late Charges If a payment includes sufficient funds to pay the “mortgage obligation” (principal, interest, taxes and insurance) except for late charges, servicers generally should apply the payment received and defer collection of the late charge. Servicers may have policies that allow for payments that omit the late charge to be held as unapplied or returned to borrowers in certain circumstances where the servicer concludes	If servicers have policies that allow for payments that omit the late charge to be held as unapplied, then servicers may not impose any late fee or delinquency charge in connection with that payment or any subsequent payments that are received and would have otherwise been applied to the loan by the due date or within any grace period when the delinquency is solely attributed to the late fee or delinquency charge. Payments that cover the full mortgage obligation without the late charge

Current *Servicing Guide* Provisions	Update
that these actions would be an effective means of bringing a borrower current.	should no longer be returned to the borrower to the extent that acceptance would not jeopardize the servicer's position in legal proceedings (e.g., foreclosure).
Part III, Section 101.03, Payment Shortages The "total amount due" for a conventional mortgage includes any late charges or prepayment charges. Therefore, if a servicer chooses to do so, it may hold as "unapplied" a payment that does not include late charges (or any allowable prepayment penalty) that are due. The servicer may then use a portion of the subsequent payment to make up the shortage so that the payment can be applied. On the other hand, a servicer that does not choose to consider late charges and allowable prepayment premiums as part of the "total amount due" may return a "short" payment that excludes these charges.	If servicers choose to hold a payment as "unapplied" because it does not include the late fee or delinquency charge, then servicers may not impose any late fee or delinquency charge in connection with that payment or any subsequent payment held as unapplied from which funds are drawn to make a full payment. Payments that cover the full mortgage obligation without the late charge should no longer be returned to the borrower to the extent that acceptance would not jeopardize the servicer's position in legal proceedings (e.g., foreclosure).

Clarification of Points and Fees Limitation

***Selling Guide*, B2-1.4-01, General Mortgage Terms and Conditions**

In accordance with existing policy, Fannie Mae will not purchase or securitize mortgage loans, regardless of the loan amount, if the total points and fees charged to the borrower exceed the greater of 5 percent of the mortgage amount or $1,000 (points and fees limitation). Fannie Mae is making several clarifications related to the application of the points and fee limitation.

Category	Clarification
Points and Fees Limitation	Certain types of points and fees are counted against the 5 percent/$1000 limitation (see list in the above-referenced *Selling Guide* topic). Fannie Mae is clarifying that those points or fees are counted against the limitation *regardless of the party paying the fee.*
Bona Fide Discount Points	Bona fide discount points are specifically excluded from the points and fees limitation. Discount points will be determined to be bona fide if they: • are knowingly paid by the borrower (which can be

Category	Clarification
	demonstrated by the discount points being fully disclosed to the borrower); and • are funded through any source for the purpose of reducing the interest rate on the loan; and • result in a meaningful reduction of the interest rate, provided that, prior to discount, the rate was consistent with current market rates based on the credit characteristics of the mortgage. A meaningful reduction is defined as a minimum of 25 basis points reduction in the interest rate for each discount point paid, provided all other terms of the mortgage remain the same. Generally, if lenders pass on loan-level price adjustments (LLPAs) to the borrower as one or more discount points, such discount points are *not* considered bona fide and must be counted in the points and fees limitation, as such discount points are neither funded for the purpose of reducing the interest rate on the loan nor result in a meaningful reduction of the interest rate on the loan. • LLPAs can be recouped by the lender as bona fide discount points if the lender documents: the interest rate was reasonably increased to recoup the LLPA; and • the borrower was offered the opportunity to pay discount points to lower the interest rate; and • the discount points otherwise meet the criteria related to bona fide discount points described above. Examples of documentation include, but are not limited to, rate sheets or other information that documents the relationship between the interest rate prior to application of discount points, the amount of the discount points paid, and the interest rate actually paid by the borrower.
Credit-Risk Price Adjustments	Credit-risk price adjustments, such as LLPAs, are specifically excluded from the points and fees limitation. However, lenders that pass on LLPAs to borrowers as discrete fees or charges should consult their legal counsel or regulatory compliance expert regarding the appropriate treatment of those fees for federal and state high-cost loan tests.

Category	Clarification
Other Miscellaneous Fees and Charges	Other miscellaneous fees and charges that, in total, do not exceed .25 percent of the loan amount may be excluded from the points and fees limitation. Miscellaneous fees and charges do not include any fees and charges specifically named in the points and fees limitation policy, whether included or excluded.

Updated Delivery Requirements in Response to Recent HMDA Amendments

***Selling Guide,* C1-2-02, Loan Data and Documentation Delivery**

Regulation C, the implementing regulation of HMDA, recently revised the thresholds and index used to determine reporting of the APR spread. The current rule compares a loan's APR to the yields on Treasury securities of comparable maturity. The new rule uses the average prime offer rate for comparable transactions. The average prime offer rate is the same market rate used to determine whether a mortgage loan exceeds the thresholds for determining if a loan is an HPML under Regulation Z.

In response to the new rule, Fannie Mae is revising the definition of "APR Spread Above Treasury Securities" in the *Field Definition for the 2000-Character Loan Delivery File Format* document available on efanniemae.com to read as follows:

> APR Spread above the applicable "Average Prime Offer Rate": a four-digit numeric value with a decimal that identifies the amount of the calculated spread, if applicable. Any loan with an Annual Percentage Rate (APR) that is "greater than or equal to 1.5 percentage points above the applicable average prime offer rate for first lien loans," or "greater than or equal to 3.5 percentage points above the applicable average prime offer rate for subordinate lien loans" must be reported. Fannie Mae will only process data attributes in this field if there is in fact a spread greater than or equal to 1.5 or 3.5 percentage points; any reported value less than 1.5 or 3.5, respectively, will be ignored. An "N/A" or "not applicable" is not provided as an optional data field.

Effective Dates

The chart below outlines the effective dates for the changes or clarifications described in this Announcement.

Topic	Effective Date
Delivery of Higher-Priced Mortgage Loans in Accordance with 2008	Effective for loan applications dated on or after October 1, 2009, including both

Regulation Z Amendments	manually-underwritten loans and loan casefiles underwritten with Desktop Underwriter® (DU®).
Revised Qualifying Rate Requirements	Effective for loan applications dated on or after October 1, 2009, including both manually-underwritten loans and loan casefiles underwritten with DU. DU will be updated to apply the revised qualifying rate requirements to all new loan casefiles submitted on or after October 1, 2009.
Clarification of Points and Fees Limitation	Immediately
Updated Late Charge Assessment Policy	Immediately
Updated Delivery Requirements in Response to Recent HMDA Amendments	Lenders must report the revised APR spread using the new methodology for loan applications taken on or after October 1, 2009, and for loans closed on or after January 1, 2010 (regardless of application date).

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Lenders who have questions about Announcement 09-24 should contact their Customer Account Team for additional information.

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