

Lender Operations Update

2015-016

Attn: HFA Lenders

HPML Appraisals and Qualified Mortgage Points and Fees

April 24, 2015

News

Reminder

Alert

Training

Overview

This Lender Operations Update addresses three topics:

1. Conventional and USDA Qualified Mortgage (QM) Points and Fees calculation to qualify for exemption to the Truth in Lending Act (TILA) HPML appraisal guidelines
2. FHA Qualified Mortgage Points and Fees
3. Points and Fees Itemization

Conventional and USDA Qualified Mortgage (QM) Cure

Background

Generally, HFA administered programs are not subject to the Ability to Repay or QM requirements. However, many HFA lenders rely on the QM-criteria to qualify for exemption from the TILA High Priced Mortgage Loan (HPML) appraisal rules. This exemption requires lenders to meet QM points and fees limits. HFA lenders may use the QM points and fees cure to qualify for exemption from the TILA HPML appraisal rules.

On November 3, 2014, the [Consumer Financial Protection Bureau \(CFPB\)](#) published guidelines for lenders and assignees, providing them with the ability to establish QM status on loans closed with points and fees that exceed the allowable threshold.

For additional details on the HPML appraisal rule see the [CFPBs TILA HPML Appraisal Rule](#) website. http://files.consumerfinance.gov/f/201401_cfpb_tila-hpml_appraisal-rule-guide.pdf

For further information on Appraisals for flipped properties see [Lender Operations Update 2014-39](#) in the Seller Guide. If this link does not work paste this into your address bar:

<http://www.allregs.com/AO/viewform.aspx?source=TOC&formtype=toc&formid=73d8885d-d9c5-47d4-9d10-b6d4732f0810>

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Effective Date	These changes are effective immediately.
Eligibility	<p>Conventional and USDA loans are eligible for the QM points and fees cure only when all of the below requirements are met:</p> <ul style="list-style-type: none"> • The loan meets all applicable QM requirements for the loan type, • The lender establishes and follows policies and procedures to perform a post-closing review of QM points and fees and issues refunds per the CFPB’s guidelines, and • The lender provides an adequate refund to the borrower within 210 days of closing and prior to any of the following taking place: <ul style="list-style-type: none"> ○ The borrower institutes any action in connection with the loan, ○ The lender, assignee, or servicer receives written notice from the consumer that the transaction’s total points and fees exceed the allowable limit, or ○ The consumer is 60 days past due on the mortgage.
Guidance for Calculating the Refund Amount	<p>The appropriate refund will not be less than:</p> <ul style="list-style-type: none"> • The total dollar amount that the QM points and fees exceed the allowable limit, and • The accrued interest on the refund amount. <p>The calculated interest will be determined based on the applicable rate from the date of closing to the date the refund is delivered, placed in the mail to the borrower, or applied to the loan amount.</p> <p>In the event uncertainty exists regarding the appropriate interest rate to use in calculating the refund, the HFA Division will use the highest possible interest rate that might apply. The refund amount may be rounded up to the nearest whole dollar.</p>
Guidance for Determining Purchase Eligibility	<p>Upon discovering an error in the points and fees calculation, lenders may use this QM cure provision to submit their loans to the HFA Division for purchase when all of the following are met:</p> <ul style="list-style-type: none"> • The loan meets the guidelines listed in the eligibility section on Page 1, • The HFA Division approves the amount of the refund, and • The refund, whether by check or a principle reduction, does not violate any guidelines of the insurer, guarantor, or the investor.

FHA Qualified Mortgage Points and Fees

Background	HUD clarified its policy that lenders have the ability to resolve points and fees errors that occur at origination before submission for FHA insurance and endorsement. Lenders may refund points and fees on FHA loans for QM criteria exemption to the TILAs HPML appraisal rules.
Effective Date	These changes are effective immediately.



Eligibility

Upon discovering an error in the points and fees calculation, the lender may provide a points and fees refund and submit the loan to the HFA Division for purchase when **all** of the following are met:

- All other FHA QM requirements are met,
 - All FHA insurance endorsement eligibility conditions are met,
 - The refund, whether by check or principal reduction, does not violate HUD policy,
 - The HFA Division approves the amount of the refund, and
 - The amount and method of the refund does not breach any of the following requirements:
 - Reduce the borrowers minimum cash investment below the FHA required 3.5%,
 - Exceed the guidelines regarding interested party contributions, or
 - Violate the calculation for the maximum insured mortgage value.
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Points and Fees Itemization

Overview

The HFA Division recommends that lenders provide a complete itemization of points and fees information to help prevent purchase delays.

Eligibility

The HFA Division performs applicable points and fees tests on all loans. Insufficient information regarding the details of points and fees charged on a loan may result in purchase delays.

Useful detailed fee documentation may contain the following information:

- A complete listing of all lender affiliates associated to the transaction,
 - Itemized details outlining all the fees charged on the loans, including who paid each fee and to whom,
 - The borrower's fully adjusted par rate, only applicable when bona fide discount points were charged,
 - The APOR on the date the interest rate was set,
 - Any prepayment penalties paid, and
 - Additional information used to determine the inclusion or exclusion of any points or fees.
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**Important
Reminder**

USBHM will not originate or purchase any High-cost or predatory loan under any federal, state, or local definition. High-cost and predatory loans cannot be cured using any points and fees refund process.

Due to the complexity of these requirements we recommend you share this information with your compliance department.

If you have questions regarding this Lender Operations Update, please contact the USBHM Lender Support mailbox at usbhmlendersupport@usbank.com

We appreciate your continued partnership.

