

## Lender Letter LL-2013-07

October 1, 2013

**To: All Fannie Mae Single-Family Sellers**

### **Quality Control and Additional Information Related to the Ability to Repay and Qualified Mortgage Requirements**

At the direction of the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac have worked together to formulate and align on certain requirements that address the Consumer Financial Protection Bureau (CFPB) final rule implementing the “ability to repay” (ATR) provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended the Truth in Lending Act (TILA). Announcement SEL-2013-06, *Selling Guide Updates Related to Ability to Repay and Qualified Mortgages*, provided a detailed description of the resulting policy changes that were incorporated into the *Selling Guide*, including the new eligibility requirements for ATR Covered and ATR Exempt Loans (summarized below).

ATR Covered and ATR Exempt Loans, with an application date on or after January 10, 2014, must:

- have a loan term not exceeding 30 years; and
- be a fully amortizing loan, as defined in Regulation Z.

In addition to the term and amortization requirements, there are points and fees limitations.

- ATR Covered Loans: Total points and fees may not exceed 3% of the total loan amount or such different amount in accordance with the qualified mortgage (QM) provisions of Regulation Z (12 CFR §1026.43(e)(3)).
- ATR Exempt Loans: Total points and fees may not exceed 5% of the total loan amount.

### ***No Change in Random and Discretionary Sampling***

In Lender Letter LL-2012-07, *Fannie Mae’s Quality Control Process – Additional Information*, Fannie Mae provided detailed information on its quality control (QC) principles, process, and practices. Under its core performing loan sample process and strategy, Fannie Mae selects a random sample of new mortgage deliveries that ensures statistical validity across the entire book of business. The random sample is augmented with discretionary samples that focus on detecting defects that may indicate loans that were ineligible for delivery to Fannie Mae because they failed to meet Fannie Mae’s underwriting and eligibility requirements.

Fannie Mae is aware of the challenges that lenders face in the implementation of the wide range of regulatory requirements in the Dodd-Frank Act. In recognition of this, particularly with regard to the points and fees limits, Fannie Mae is not making any changes to its QC sampling methodology, review scope, documentation requirements, or repurchase processes as a result of the new eligibility requirements at this time. In particular, Fannie Mae will not verify lenders’ calculation of points and fees for ATR Covered Loans regarding compliance with the applicable QM-related limitation. After this initial transitional period (the duration of which is uncertain), Fannie Mae will incorporate additional QC measures relating to the new eligibility requirements, the scope and timing of which will be announced before they commence.

Fannie Mae will continue its current anti-predatory lending review measures for selected loans, including as to compliance with Fannie Mae’s policy on “high-cost mortgages” under the Home Ownership and Equity Protection Act (HOEPA) provisions of Regulation Z.

## ***Lender Operational Controls***

As part of regular onsite Fannie Mae reviews, lenders will be required to provide evidence of processes and controls that support compliance with the applicable points and fees thresholds, as well as other new regulatory requirements added in the Dodd-Frank Act.

## ***Repurchases During Initial Transitional Period***

During the initial transitional period, except as indicated below, Fannie Mae will not require repurchase of a loan on the grounds of noncompliance with the applicable QM-related points and fees eligibility requirement as long as it was otherwise eligible for acquisition. However, if a court of law, regulator, or other authoritative body determines the loan exceeded the applicable QM-related points and fees limitation in violation of the CFPB final rule, such loan is subject to repurchase. In addition, if Fannie Mae shall determine through established delivery or QC review processes that any loan has ineligible term or amortization provisions, such loan is subject to repurchase. Moreover, if a court, regulator or other authoritative body determines a lender made a loan without determining a borrower's ability to repay as required under Regulation Z, such loan is subject to repurchase. Finally, consistent with current standards, all loans found to be "high-cost mortgages" under HOEPA or applicable state laws will be subject to repurchase.

## ***Compliance with CFPB Final Rule and with State Laws***

Fannie Mae recognizes the complexities in implementing the CFPB final rule, including the determination of points and fees. Lenders are encouraged to review the resources and guidance provided by the CFPB on their 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's final rule. As required by the *Selling Guide*, in originating mortgages for sale to Fannie Mae, lenders must comply with all applicable laws.

## ***Documentation and Record Retention***

At this time, Fannie Mae is not requiring that lenders submit any additional documentation into the mortgage file beyond that required in E-2-07, *Post-Closing Mortgage Loan File Documentation*. However, that topic requires lenders to maintain all documents used to support each underwriting decision. Since a borrower may assert a lender's ATR noncompliance as a defense to a foreclosure action, lenders may have to demonstrate, even long after closing, their compliance with the new eligibility criteria in such proceedings. Therefore, Fannie Mae expects lenders to retain all materials in their mortgage files as may be necessary to document such compliance, including those that may traditionally not have been included, such as rate sheets or other materials relating to the interest rate and discount points offered to the borrower.

Additionally, the record retention requirements described in D1-3-06, *Lender Post-Closing Quality Control Reporting, Record Retention, and Audit*, remain unchanged.

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Lenders who have questions about this Lender Letter should contact their Account Team.

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