

## Announcement 09-24 Frequently Asked Questions (FAQs)

December 2009

This document provides responses to frequently asked questions about [Announcement 09-24, 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.](#)

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### Delivery of Higher-Priced Mortgage Loans (HPMLs) in Accordance with 2008 Federal Regulation Z Amendments

**Q1. If a Refi Plus™ loan is identified as an HPML, what is the lender required to do?**

Refi Plus guidelines do not require the lender to verify the borrower's income, assets, or current obligations. If a loan is considered an HPML, the lender is required to verify the borrower's ability to repay the loan in accordance with the requirements for HPMLs outlined in Regulation Z.

**Q2. If the income or asset documentation obtained from the borrower for a Refi Plus loan that is an HPML conflicts with the information stated by the borrower, how does this impact the approval for the loan?**

In these cases, the lender must rely on the income and asset documentation obtained from the borrower to verify the borrower's ability to repay the loan in accordance with the HPML requirements under Regulation Z.

**Q3. Announcement 09-24 states that for HPMLs, borrower "income, assets, and obligations" must be verified. What if a borrower does not have assets and/or assets are not required to qualify?**

In accordance with Fannie Mae's standard policy, assets that are not needed to complete the transaction (including reserves, as applicable) do not need to be verified. Above all, however, the lender must ensure compliance with Regulation Z for HPMLs. Fannie Mae does not require any verification for HPMLs over and above the requirements outlined in Regulation Z.

**Q4. What level of documentation is required to “verify” the borrower’s income and assets for an HPML?**

Fannie Mae is not imposing any documentation requirements specifically for HPMLs. As a general guideline, lenders may follow standard loan documentation requirements outlined in the *Selling Guide* for Fannie Mae purposes; however, the lender is solely responsible for determining whether these guidelines comply with Regulation Z for HPMLs.

## Revised Qualifying Rate Requirements

**Q5. Do the changes to the qualifying rate for 5/1 ARMs, loans subject to temporary interest rate buydowns, and step-rate loans apply to all loans or just HPMLs under Regulation Z?**

The payment qualification updates apply to all loans, regardless of occupancy or whether the loan is considered to be an HPML.

**Q6. Are the new qualification requirements available in Desktop Underwriter® (DU®)?**

DU has been updated so that loan casefiles created on or after October 1, 2009 are subject to the following new qualifying payment requirements:

- Loan casefiles created on or after October 1, 2009 for a 5-year adjustable rate mortgage (ARM) or a 5-year step-rate mortgage will be qualified using the greater of the fully indexed rate or the note rate. DU defines the fully indexed rate as the index plus the margin as entered into the online loan application. If the index or margin is not submitted to DU, DU will use the note rate plus 1.5 percentage points as the fully indexed rate.
- Loan casefiles created on or after October 1, 2009 that are subject to a temporary interest rate buydown will be qualified using the note rate for fixed-rate mortgages, 7-year ARMs, and 10-year ARMs; or the greater of the fully indexed rate or the note rate for 6-month, 1-year, 3-year, and 5-year ARMs.

**Q7. What about qualification requirements for other short-term ARMs?**

With the changes published in Announcement 09-24, Fannie Mae now requires qualification based on the greater of the qualifying rate specified for the transaction, the note rate, or the fully indexed rate for all ARMs with initial fixed interest rate periods of 5 years or less. (See *Selling Guide* Section B2-1.3-03 Adjustable Rate Mortgages (ARMs) for additional details on qualifying ARMs with initial fixed periods of 3 years or less).

## Clarification of Points and Fees Limitation

**Q8. Are seller-paid fees excluded from the points and fees limitation?**

No. If the points and fees are otherwise included in the points and fees policy contained in the *Selling Guide*, they must be included regardless of the party paying the fee. For example, if the seller pays “underwriting fees” on behalf of the borrower, these fees would be counted against the points and fees limitation even though not paid by the borrower.

**Q9. When is a loan-level price adjustment (LLPA) considered “bona fide”?**

The concept of “bona fide” relates to discount points, not LLPAs. In the event that LLPAs are passed on to the borrower by the lender as “discount points,” the discount points must be deemed to be bona fide in order to be excluded from the points and fees limitation. To be bona fide, the discount points must be knowingly paid by the borrower, funded through any source for the purpose of reducing the interest rate, and result in a meaningful reduction of the interest rate – e.g., the interest rate should be reduced by at least 25 basis points for each discount point paid.

**Q10. How can a lender document that the borrower knowingly paid the discount points?**

Lenders may use whatever documentation they deem sufficient to indicate the borrower is knowingly paying discount points. Two examples of acceptable documentation are 1) a rate lock agreement that outlines the discount points to be paid for the rate selected, and 2) the final HUD-1 showing the discount points being paid by the borrower.

**Q11. How can the lender recoup LLPAs through “bona fide” discount points?**

For discount points to be considered “bona fide” and excluded from the points and fees limitation, they must result in a meaningful reduction to the interest rate – e.g., a reduction of at least 25 basis points for each discount point paid. Lenders have the option of increasing the interest rate to recoup LLPAs instead of charging the borrower a separate fee to recoup the LLPAs. If the lender chooses to increase the interest rate as a means of recouping the LLPAs, the lender may offer the borrower the opportunity to pay discount points to reduce the rate. Such discount points will be treated as bona fide if they meet the standards described in Announcement 09-24.

**Q12. What documentation can be used to indicate what portion of the discount points is represented by LLPAs?**

For discount points to be excluded from the 5 percent cap on points and fees, they must satisfy the definition of “bona fide discount points” under Announcement 09-24. Any other fee or charge that is categorized by the lender as a discount point, but which does not meet the definition of bona fide discount points, will be included in points and fees for the purpose of the 5 percent limitation. For example, a loan’s HUD-1 might show that the borrower paid four discount points. If one discount point meets the definition of bona fide discount points but the remaining three do not, only the single bona fide discount point will be excluded from the point and fees subject to the 5 percent limitation.

**Q13. What if all discount points do not meet the “bona fide” requirements?**

The “bona fide” requirements outlined in Announcement 09-24 provide guidance for determining the amount of discount points that can be excluded from the points and fees limitation. If there are discount points that do not meet the bona fide requirements, they will be included in points and fees subject to the 5 percent limitation.

**Q14. If the seller pays the discount points on behalf of the borrower, can the discount points still be considered “bona fide”?**

If the discount points meet the requirements to be considered “bona fide,” they can be treated as “bona fide discount points” even if paid by the seller.

**Q15. Could there be instances in which discount points can be considered “bona fide” – i.e., providing a “meaningful reduction in interest rate” – without resulting in a reduction of at least 25 basis points for each discount point paid?**

The 25 basis points reduction per discount point paid is a “safe harbor” for establishing a “meaningful reduction in interest rate,” and discount points that meet this standard will automatically be considered “bona fide.” A loan with a less than 25 basis point reduction in interest rate per discount point paid could also provide a meaningful reduction in interest rate, but the terms of the loan would need to be reviewed and supported by documentation provided by the lender on a case-by-case basis.

## **Updated Delivery Requirements in Response to Recent HMDA Amendments**

**Q16. Are there any limitations for the values that can be delivered in the “APR Spread above applicable ‘Average Prime Offer Rate’ ” field at loan delivery?**

Any number value can be delivered in this field, but any value less than 1.5 for a first lien, or 3.5 for a subordinate lien, will be ignored by Fannie Mae. Lenders may not deliver an “N/A” as a value for this field.