

Thursday, February 4, 2021

Bulletin #2021-NDC-001

NOTICE TO NDC CUSTOMERS

QM Points and Fees Cure Expiration Under TILA

Recently the Consumer Financial Protection Bureau (CFPB or Bureau) issued a final rule that amended definitions to the Qualified Mortgage (QM). In a final rule released on October 20, 2020 (the Extension Final Rule), the Bureau amended Regulation Z to replace the January 10, 2021 sunset date of the Temporary GSE QM loan definition with a provision stating that the Temporary GSE QM loan definition will be available only for covered transactions for which the creditor receives the consumer's application before the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z.

In the General QM Proposal, the Bureau proposed, among other things, to remove the General QM loan definition's DTI limit (previously 43%) and replace it with a limit based on the loan's pricing. The final rule retains the existing product-feature and underwriting requirements, however, establishes limits on points and fees. This rule also previously stated that "cures" to the total points and fees that exceed the three percent (3%) threshold could be performed by "paying the consumer the excess (plus interest) within 210 days after consummation (unless prior to that point the consumer had notified the creditor/assignee/servicer of the excess, or the consumer had become 60 days past due on the loan)".

While the Mortgage Bankers Association tells us there is limited usage of the cure provision we felt it important to notify you of this change and provide the specific terms of which a loan will be defined as a QM and will be eligible for purchase under TILA, ATR and the QM definitions, further clarified as loans for which a creditor "may presume that the loan has met" the ATR requirements. The statute generally defines a QM to mean any residential mortgage loan for which:

- The loan does not have negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling."
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.
- (TILA and Regulation Z also provide a separate price-based coverage trigger based on the points and fees charged on a loan. See TILA section 130(aa)(ii); Regulation Z § 1026.32(a)(1)(ii).)

Therefore FLCBank will no longer allow curing of errors due to exceeding the points and fees test after the loan closes.

Additionally, we will require that a points and fees test be performed and evidence a "pass" rating prior to closing.

Important: Loans found to exceed the QM points and fees test will not be purchased by FLCBank.

[Click here to read](#) the procedural guidance to operational requirements in the points and fees testing that should occur prior to the issuance of the consumer disclosures specific to [SETUP](#).

[Click here to read](#) the procedural guidance to operational requirements in the points and fees testing that should occur prior to the issuance of the consumer disclosures specific to [PRE-PURCHASE REVIEW](#).

You may contact your Account Executive for information on the revised procedures and requirements.