AllRegs®
Compliance News

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

Qualified Mortgage, High Cost Mortgages and Higher-Priced Mortgage Loans

Part 1: May the Regulators Be Ever in Your Favor!

by Richard Triplett, CMB, Vice President and Director of Compliance for AllRegs, January 14, 2013

January 10, 2014: The compliance date with the final rules implementing the provisions of the Dodd-Frank Act with regard to the ability to repay standards, including the Qualified Mortgage (QM) AND the revisions under the Home Ownership and Equity Protection Act (HOEPA).

June 1, 2013: The compliance date with the final rules regarding higher-priced mortgage loans (HPML), including the escrow account requirements. These three rules combined will require a monumental amount of analysis and implementation considerations. Considering the complexity of the final rules I will discuss these rules in a series of articles.

There was a reason these three final rules were published on the same date (January 10, 2013), other than to provide migraines to lawyers and compliance staff, they are interrelated. The common thread: when you get down into the weeds - it's the points and fees calculations. The points and fees calculations for inclusion are determined by the annual percentage rate (APR). The QM will use the same revised points and fees provisions under High Cost Mortgages (Reg Z §1026.32 - HOEPA) for determining the APR used in calculating a QM under safe harbor provisions or under rebuttable presumption provisions. Whether the transaction falls into the category of a QM under safe harbor provisions or a QM with rebuttable presumption of compliance, depends on whether or not the loan is considered a higher-priced mortgage loan.

The intersection of the QM, HPML and HOEPA revisions is complicated by this crossover of provisions. This article will focus on finance charges, including

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

points and fees for determining the APR for all three of these loan categories to establish a basis of understanding of the process to determine APR. As you will see below the details are critical for implementation.

Finance Charges

There is no change to the definition of (and exclusions from) finance charges as they exist now under Regulation Z (§1026.4(a) & (b)) that are used for the basis of both the HPML and HOEPA loan calculations; however you also need to consider the definition of points and fees, which includes finance charges stated under this section, and the modifications due to the new rules.

Points and Fees

Putting transaction type applicability aside for future articles, here is the breakdown for points and fees under Section 32, post January 10, 2014:

High Cost Mortgages: Closed End Transactions [§1026.32(b)]

1) Finance Charges, except that the following items are excluded:
    - Interest or the time-price differential;
    - Any premium or other charge imposed in connection with any federal or state agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;
    - For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any federal or state agency program:
        - If the premium or other charge is payable after consummation, the entire amount of such premium or other charge; or
        - If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of origination provided that the premium or charge is

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan;

- Any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either, unless the charge is otherwise required to be included;
- Up to 2 bona fide discount points paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:
  - The average prime offer rate by more than 1%; or
  - For transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than 1%; and
- If no discount points have been excluded, then up to 1 bona fide discount point paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:
  - The average prime offer rate by more than 2%; or
  - For transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act by more than 2%;

2) All compensation paid directly or indirectly by a consumer or creditor to a loan originator that can be attributed to that transaction at the time the interest rate is set;
3) Real Estate Fees (other than amounts held for future payment of taxes), unless (the charge is reasonable; the creditor receives no direct or indirect compensation in connection with the charge; and the charge is not paid to an affiliate of the creditor):
   - Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
   - Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
   - Notary and credit report fees.

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

- Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood-hazard determinations.
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge (other than amounts held for future payment of taxes), unless:

4) Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;
5) The maximum prepayment penalty that may be charged or collected under the terms of the mortgage loan; and
6) The total prepayment penalty incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.

Definitions:

Bona fide discount point - The term bona fide discount point means an amount equal to 1 percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer.

Total loan amount - The total loan amount for a closed-end credit transaction is calculated by taking the amount financed and deducting any cost listed above included as points and fees and financed by the creditor.

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

Prepayment penalty - means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

High Cost Mortgages – Open End Transactions [§1026.32(b)]

The points and fees for open-ended loans is the same as for closed-end loans with the following differences and additions:

1) The maximum prepayment penalty that may be charged or collected under the terms of the open-end credit plan;
2) The total prepayment penalty incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either;
3) Any fees charged for participation in an open-end credit plan, payable at or before account opening; and
4) Any transaction fee, including any minimum fee or per-transaction fee, which will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan.

Definitions:

Bona fide discount point- The term *bona fide discount point* means an amount equal to 1 percent of the credit limit for the plan when the account is opened, paid by the consumer, and that reduces the interest rate or time-price differential applicable to the transaction

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

Sales & Support: (800) 848-4904 | Fax: (651) 686-0906
2600 Eagan Woods Drive, Suite 220, Eagan, MN 55121

based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer.

Total loan amount - The total loan amount for an open-end credit plan is the credit limit for the plan when the account is opened.

Prepayment penalty - means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

In order to proceed with understanding the implications of the QM and the HOEPA rule, you must have a grasp of these definitions of points and fees. You cannot determine whether the transaction is a Qualified Mortgage, Higher-Priced Mortgage Loan or a High Cost Mortgage without performing the calculations associated with the APR and an understanding of what is included for each type based on the recent final rules. This is where we will begin our journey together on comprehending the nuances, setting the stage by looking at the future of APR calculations. Look for the next in this series very soon when we get into the specifics of the QM and the additional proposed rule changes already published.

This article first appeared in the AllRegs Weekly Digest and may be viewed in its original format at http://solutions.allregs.com/may-the-regulators-be-ever-in-your-favor/.

