

**AMERICAN BANKERS ASSOCIATION
AMERICAN FINANCIAL SERVICES ASSOCIATION
CONSUMER MORTGAGE COALITION
MORTGAGE BANKERS ASSOCIATION**

May 12, 2014

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street S.W., Room 10276
Washington, D.C. 20410
www.regulations.gov

Re: Docket No. FR 5360-P-01
FHA; Handling Prepayments; Eliminating Post-Payment Interest Charges

Dear Sir or Madam:

The undersigned trade associations appreciate this opportunity to comment on the Federal Housing Administration's ("FHA") proposal to revise FHA regulations that allow mortgagees to charge borrowers interest through the end of the month during which a loan is paid in full. The proposal would permit mortgagees to charge interest only through the day the loan is fully paid.

This regulatory amendment is necessary because of a regulation issued by the Consumer Financial Protection Bureau ("CFPB") in implementing the ability-to-repay requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The CFPB, in its Regulation Z, implements the ability-to-repay requirements by permitting prepayment penalties only on qualified mortgage ("QM") loans, and only during the first three years of the loan.¹ The CFPB defines prepayment penalty for this purpose to include:

“[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

¹ 12 C.F.R. § 1026.43(g)(2)(i).

is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.”²

This applies to loans for which a creditor receives an application on or after January 10, 2014.³ The proposed amendment to FHA’s regulation would prohibit loans from permitting a prepayment penalty after a loan is fully repaid, for the last days of a month after a mid-month repayment. The loans could not permit such charges, even if the charge is never actually imposed on a consumer. This is helpful because it would remove the possibility that FHA loans that permit such charges, even if the charge is not imposed, would be inconsistent with the CFPB’s definition of prepayment penalty, and hence its ability-to-repay regulation.

However, this is only a part of what is needed to make FHA lending practices consistent with the CFPB’s new regulation in a manner that is helpful to affected borrowers.

Ginnie Mae continues to require servicers to remit to investors the amount of interest that would have been charged, or could have been charged, absent this proposed amendment to FHA’s regulation. Ginnie Mae requires the following:

“An issuer is responsible under the Ginnie Mae I MBS Program for making payments, or making funds available for the payment, of interest due security holders, and under the Ginnie Mae II MBS Program for providing to the CPTA the funds necessary to make payments of interest due security holders, **even if associated interest payments are not required to be paid by the mortgagor** on the underlying pooled loan. For example, when a mortgage is prepaid in full in mid-month, the mortgagor pays interest only until the payoff date. **Security holders, however, are entitled to interest through the end of the month.** The issuer must make up the shortfall from its own funds.”⁴

If servicers of FHA loans are continued to be required to pay investors charges that the servicer may not collect from consumers, originating lenders and servicers will need to price that charge into the cost of the loan. The charge will be passed through to consumers indirectly. This is not a consumer protection.

² 12 C.F.R. § 1026.32(b)(6)(i) (for closed-end credit). The ability-to-repay regulation, at 12 C.F.R. § 1026.43, does not generally apply to open-end credit.

³ 78 Fed. Reg. 6408, 6555 (January 30, 2013).

⁴ Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Rev. 1 Chapter 5-2, (C) *Interest Due Security Holders but not Payable by Mortgagor* (August 1, 2013) (emphasis added).

It would be most advisable for HUD, FHA, Ginnie Mae, and the CFPB to coordinate their actions so that the intended consumer protection can be implemented. Servicers should not be required to remit to investors charges that servicers cannot collect from consumers.

Sincerely,

American Bankers Association
American Financial Services Association
Consumer Mortgage Coalition
Mortgage Bankers Association