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QMs. The consumer can challenge both the ATR and QM standards, and the burden of proof will be on [Company Name] to defend that its ability to repay determination was made in good faith.

The consumer could claim that [Company Name] failed to make a reasonable, good faith determination of their ability to repay before the loan was made. If the consumer proves this claim in court, [Company Name] could be liable for, among other things, up to three years of finance charges and fees the consumer paid as well as the consumer's legal fees.

There is a three-year statute of limitations on ability to repay claims, after which, consumers can bring ability to repay claims only as setoff/recoupment claims in a defense to foreclosure.

#### 1.5.4 Appendix Q

*Note: The CFPB's amendment to the ATR/QM Rule in December 2020 removes Appendix Q requirements as of June 30, 2021.*

Appendix Q to Part 1026 of the amendment provides the standards for determining monthly debt and income for the calculation of DTI in order to determine whether a loan meets the standard for a Qualified Mortgage. The CFPB (The Bureau) codified HUD Handbook 4155.1 *Mortgage Credit Analysis for Mortgage Insurance*, but modified portions to eliminate FHA-specific underwriting process requirements.

[Company Name] shall comply with Appendix Q requirements when evaluating employment and non-employment related income as well as consumer liabilities.

- Religious or nonprofit organizations

#### **2.7.4 Non-Purchasing Spouse/Non-Borrower Spouse**

When a married borrower applies in his name alone, the spouse is referred to as the non-borrower spouse. A non-borrower spouse may have rights as a co-owner of the mortgaged premises due to state community property or marital rights.

#### **2.7.5 Power Of Attorney**

Power of attorney must be approved by [Company Name] Underwriting and Secondary and must be specific to the mortgage transaction. Power of attorney may be permitted, with prior approval by [Company Name], on the following:

- Purchase or rate and term refinance transactions
- Cash-out transactions
- Investment properties

Typically, the state where the borrower resides will be where the power of attorney should be executed, with the following exceptions:

- Purchase transaction for which the borrower is moving to another state and if the specific power of attorney is related to the purchase, then it should be executed in that state.
- Purchase of a second home/investment property in another state and if the specific power of attorney is related to the purchase, then it should be executed in the state in which the property is being purchased.

#### **Fannie Mae B8-5-06, Requirements for Use of a Power of Attorney**

Subject to restrictions, Fannie Mae allows an attorney-in-fact or agent under a power of attorney to sign the security instrument and/or note as long as the lender obtains a copy of the applicable power of attorney. Fannie Mae does not allow the use of POA for cash-out refinances.

#### **Freddie Mac Seller Guide 6301.4: Power of Attorney**

Freddie Mac will permit the use of a POA in situations of hardship or emergency, or when applicable law requires the use of a POA.

### 3.12.4 Ineligible Contributions

Generally, the cost of any contributions that are in the form of personal property or “giveaways” (such as furniture, decorator items, automobiles, club membership, etc.) are not eligible contributions, and are considered sales concessions.

### 3.12.5 Seller Concessions

**Fannie Mae B3-4.1-03, Types of Interested Party Contributions (IPCs)**

**Freddie Mac Seller Guide 4204.3: Interested Party Contributions**

Sales concessions are IPCs that are non-real estate items such as cash, moving expenses, furniture, and decorator allowances. Contributions that exceed the allowable limits for IPCs are also considered seller or sales concessions.

The seller concessions must be deducted from the sales price to reflect the amount of contribution that exceeds the maximum, and the maximum LTV/CLTV ratios must be recalculated using the reduced sales price or appraised value.

### 3.12.6 Buydown as IPC

**Fannie Mae B3-4.1-03, Types of Interested Party Contributions (IPCs)**

**Freddie Mac Seller Guide CH. 4204.3: Interested Party Contributions**

If the borrower is offered a temporary or permanent interest rate buydown from an IPC, the cost to fund the buydown must be included in the IPC calculation. Only full interest rate buydowns (e.g., 2–1) are permitted.

The temporary buydown does not change the terms of the mortgage note. The permanent note rate is printed on the note and the borrower is obligated to pay that note rate if the buydown funds are not available.

A buydown agreement detailing the terms must be signed at closing.

The agreement must

- provide that the borrower will not be relieved of his obligation to make the mortgage payment required by the terms of the note if for any reason the buydown funds are not available;



When the lot has been owned by the borrower more than 12 months prior to the closing of the interim construction financing, the above guidelines apply, except that acquisition cost documentation is not required.

#### **5.6.4 Construction-to-Permanent Treated as a Cash-Out Refinance**

When the lot has been owned by the borrower fewer than 12 months prior to the closing of the interim construction financing, the following guidelines apply:

- The borrower's intent is to extract land equity from the subject property.
- The borrower may also receive cash back for his actual cash investment into the property, as properly documented.
- The LTV/TLTV/CLTV is within the cash-out guidelines for the product.
- The LTV/TLTV/CLTV is determined by dividing the unpaid principal balance of the construction-to-permanent mortgage by the lesser of
  - the current appraised value for the property (both the lot and the improvements); or
  - the total acquisition costs (which are the sum of the documented costs of the construction and the sales price of the lot)
- Acquisition cost must be documented.

When the lot has been owned by the borrower more than 12 months prior to the closing of the interim construction financing, the above guidelines apply, except that acquisition cost documentation is not required.

#### **5.6.5 Acquisition Cost Documentation**

To document acquisition cost, the borrower must provide a purchase contract or construction statement (cost breakdown), signed by the borrower and the builder.

If the lot is acquired separately, the borrower must also provide a copy of the recorded deed with the date of filing (if applicable) and one of the following:

- A copy of the lot purchase agreement or contract for deed
- An owner's title policy
- A Closing Disclosure or HUD-1 settlement statement

Any large differences between the current appraised value and the original purchase price of a lot that was acquired within the previous 12 months must be evaluated.

##### **5.6.5.1 Borrower Acted as Contractor**

The appraiser must, at a minimum, do the following:

- Perform a visual inspection of the interior and exterior areas of the subject property.
- Inspect the neighborhood.
- Inspect each of the comparable sales, at least from the street.
- Research, verify, and analyze data from reliable public and/or private sources.
- Report his analysis, opinions, and conclusions.

#### **6.6.16 FNMA 1004D/FHLMC 442: Appraisal Update and/or Completion Report**

This form is required for appraisal updates and/or completion reports for all 1–4 unit appraisal reports. At a minimum, when completing the Appraisal Update portion of the report, a photograph of the front of the subject property must be included.

#### **6.6.17 FNMA 1007/FHLMC 1000: Single Family Comparable Rent Schedule**

A Single Family Comparable Rent Schedule is required with a one-unit investment property where the borrower is using rental income to qualify. The form, which is prepared by the appraiser, is designed to present the information needed to determine the market rent for a single-unit investment property.

#### **6.6.18 FNMA 216/FHLMC 998: Operating Income Statement**

This form is used to determine the amount of operating income that can be used in evaluating the borrower's credit. The underwriter will use the second page of the form to calculate the monthly operating income and net cash flow for the property, and to explain any adjustments made to the borrower's figures.

This is required for all investment property transactions, regardless of whether or not rental income is being used to qualify.

#### **6.6.19 FNMA Form 2075/FHLMC Form 2070**

These forms are not appraisal reports.

- Fannie Mae Form 2075 Desktop Underwriter Appraisal Waiver
- Freddie Mac Form 2070 Loan Product Advisor Condition and Marketability Report

When Desktop Underwriter recommends Form 2075, or Loan Product Advisor recommends Form 2070, the AUS has determined that the sales price or estimated value submitted will provide adequate collateral for the mortgage loan. A property appraisal is not required for these transactions.

credit score, certain compensating factors may be allowed to justify exceeding the maximum qualifying ratios. For a loan with a decision credit score of 580 or better, the ratios may be 40/50.

A matrix of credit score, applicable ratios, and acceptable compensating factors is provided in FHA Single Family Policy Handbook 4000.1, Section II, A.5.d.viii Approvable Ratio Requirements. Any compensating factors must be supported by the documentation as specified in this section.

## **9.20 Appraisal Requirements**

**FHA 4000.1, II, A.3**  
**FHA 4000.1, II, B**

Each appraisal report submitted to [Company Name] requires the individual appraiser to fully comply with all Uniform Standards of Professional Appraisal Practice (USPAP), Financial Institutions Reform Recovery and Enforcement Act (FIRREA) appraisal regulatory standards, and the Federal Housing Finance Authority (FHFA) which issued the Appraiser Independence Requirements (AIR).

Appraisals must be completed by approved FHA roster appraisers and include the assigned FHA case number. Appraisers must confirm the subject property meets all HUD minimum property standards.

As the on-site representative for [Company Name], the appraiser must provide preliminary verification that a property meets the property acceptability criteria, which includes HUD's [Minimum Property Standards](#) (MPS).

Minimum Property Requirements refer to

- general requirements that all homes insured by FHA be safe, sound, and secure; and
- regulatory requirements relating to the safety, soundness and security of [New Construction].

Refer to FHA SFH Policy Handbook 4000.1, Section II, A.3 for FHA policy guidance on appraisals, including reporting standards, validity periods, effective dates, appraisal reuse and extensions, fees, notification to borrowers, and other important topics. See FHA SFH Policy Handbook 4000.1, Section II, B for Appraiser and Property Requirements.

[Company Name] requirements are as follows:

- All appraisers must provide a copy of their valid license and E&O insurance. This evidence must be included in every loan file.
- Appraisals are valid for 120 days. After expiration, a new appraisal must be obtained.
- If the property was built before 1978, FHA has additional lead-based paint requirements.

High-balance loan amounts are subject to the following: