FAQ on ML 2011-11

1. **<u>Effective Date of the Mortgagee Letter (ML):</u>** <u>When is the ML effective?</u>

The ML effective dates may vary depending on whether the policy section clarifies existing guidance; issues new guidance; or combines a clarification of existing guidance with new guidance.

- <u>Clarifications</u> of outstanding guidance clarify guidance which was **already in effect** prior to the publication of the ML on February 14, 2011.
- <u>New guidance</u> will go into effect no later than April 18, 2011. If new policy benefits the borrower, lenders may implement new guidance prior to April 18, 2011.

Each section of the ML has a subject heading in the left margin of the document. The following matrix shows the effective date for each section:

Section	Applies to	Guidance	Implementation Date
Current Status of the Refinanced Mortgage	All refinances	Clarification	Already in effect
Subordinate Liens	All refinances	Clarification	Already in effect
Mortgagor Occupancy of Former Investment Property	All refinances	New	All case numbers assigned on or after April 18, 2011.
Net Tangible Benefit	Streamline refinances	New and Clarification	Clarification already in effect; New Guidance no later than April 18, 2011. See Net Tangible Benefit Matrix for
Certifications and Verifications	Streamline refinances	New	No later than April 18, 2011.
Use of TOTAL Scorecard	Streamline refinances	New	No later than April 18, 2011.
Maximum Insurable Loan Balance	Non-credit-qualifying streamline refinances	New	All case numbers assigned on or after April 18, 2011 **(change from ML).**
Seasoning of the Refinanced Mortgage	Streamline refinances	Clarification	Already in effect
Acceptable Payment History	Cast out refinances	New and Clarification	Clarification already in effect; New guidance (6-month seasoning requirement) for all case numbers assigned on or
Land Contracts and Ground Rents	Cast out refinances	New and Clarification	Clarification already in effect; No later than April 18, 2011 for new guidance **(ground lease rents)**.

All Refinances - Current Status of the Refinanced Mortgage

2. **Current Status of the Refinanced Mortgage**: Must the old mortgage that is being refinanced be current on the closing date of the new mortgage?

Yes. Borrowers must be current on the mortgage being refinanced for the month due prior to the month in which they close the refinancing. For example, if the closing will occur in April, the borrower must make the March payment within the month of March. The borrower may make the April payment before closing, or may include the April payment in the payoff amount at closing.

3. **Current Status of the Refinanced Mortgage**: How must the lender document the current status of the refinanced mortgage?

The refinancing lender must obtain a copy of the payment history to document that the borrower was current for the month prior to the month in which the closing occurs. Acceptable documentation for payment history may include any one or combination thereof the following:

- Verification of Mortgage (VOM) from a third party credit reporting provider
- Payment history provided by the current servicing lender
- Bank statements provided by the borrower
- Cancelled checks provided by the borrower

All Refinances – Subordinate Liens

4. **Subordinate Liens**: If the subordinate lien was originally an open-ended Home Equity Line of Credit (HELOC), but the existing lender converted it to a closed-end loan that prohibits additional advances, may the refinancing lender calculate the Combined Loan to Value ratio (CLTV) using the outstanding balance?

Yes. Lenders may calculate the CLTV using the outstanding balance because the junior lien is now a closed-end loan.

5. **Subordinate Liens**: How must the lender document the conversion of an open-ended HELOC to a closed-end junior lien?

Lenders must obtain a copy of the Note or Deed showing the closed end terms to document the change in lien status.

6. **Subordinate Liens**: May lenders use a rate and term refinance to partially pay down an existing seasoned HELOC or existing seasoned closed-end second lien?

Yes.

7. **Subordinate Liens:** If the lender uses a rate and term refinance to partially pay down an existing seasoned HELOC, but the entire line of credit plus the new FHA rate and term refinance yields a CLTV that is 97.75 percent or less, may the full line of credit remain open, or must the existing HELOC be modified to the paid-down balance?

The HELOC may increase back to its original limit if the property securing the first mortgage has sufficient value to support the increase, and the CLTV remains within 97.75 percent.

<u>All Refinances – Mortgagor Occupancy of Former Investment Property</u>

8. **Mortgagor Occupancy of Former Investment Property**: How must the lender document the exact date the borrower re-occupied the property?

The lender must obtain documentation such as (but not limited to) utility bills, property assessment statements, bank statements and similar items, and must use prudent underwriting practices to determine when the borrower re-occupied the property.

9. **Mortgagor Occupancy of Former Investment Property**: Does the case number assignment date or the loan application date trigger the 12-month occupancy requirement?

The loan application date triggers the 12-month occupancy requirement.

10. Is streamline refinancing allowed for mortgagor occupants of a former investment property?

Yes. A streamline refinance is allowed for mortgagor occupants of former investment properties but is limited to rate and term refinancing with an LTV not to exceed 85 percent *if the mortgagor occupant has occupied the property for less than 12 months prior to the loan application date of the refinancing mortgage*. **This is a clarification to ML 2011-11.** Once the mortgagor occupant lives in the property for 12 months or more prior to the loan application date of the refinancing mortgage, the mortgagor will be eligible to streamline refinance at a rate and term at 97.75 percent and 85 percent for cash-out refinance transactions. **This is a clarification to ML 2011-11.**

All Refinances – Three and Four Unit Properties

11. Three and Four Unit Properties: Does HUD Handbook 4155.1.2.B.4, which discusses purchase transactions involving three and four unit properties, also apply **in its entirety** to refinance transactions on these properties?

Yes. Section 4155.1.2.B.4.d, which concerns the mortgagor's required personal reserves to close on a purchase of a three or four-unit property, **does apply** to refinance transactions on these properties. Although reserve requirements for refinance transactions were not specifically mentioned in ML 2011-11, **reserve requirements for refinance transactions are applicable** since the ML covers section 4155.1.2.B **in its entirety.** Current handbook guidance in section 4155.1.2.B.4 concerning reserve requirements makes reference to "purchase transactions." It will be clarified shortly to specifically mention refinance transactions.

Streamline Refinances – Net Tangible Benefit

The guidance in the ML and the matrix below replaces and rescinds paragraph I.C. of Mortgagee Letter 2009-32 and its subject incorporation on HUD Handbook 4155.1.6.C.5.a. In the matrix below, we have compared guidance in ML-2009-32 with ML 2011-11 and identified what is existing guidance and what is new guidance within the matrix.

12. Net Tangible Benefit: What is the definition of "net tangible benefit", in the context of a streamline refinance?

"Net tangible benefit" is either:

- A 5 percent reduction to the P&I of the mortgage payment plus the annual MIP, or
- Refinancing from an Adjustable Rate Mortgage (ARM) to a fixed rate mortgage **in accordance with the conditions in the "net tangible benefit" matrix**.

Reducing the term of a mortgage is **acceptable** on a streamline refinance **if** the new mortgage meets the net tangible benefit test above.

13. Net Tangible Benefit: How does the lender properly calculate the net tangible benefit when refinancing **from** a Hybrid ARM during the **adjustable** period?

During the adjustable period, lenders must treat a Hybrid ARM exactly like a One-Year ARM.

14. Net Tangible Benefit: How does the lender properly calculate the net tangible benefit when refinancing **from** a Hybrid ARM during the **fixed** period?

During the fixed period, lenders must treat a Hybrid ARM exactly like a fixed rate mortgage.

To From	Fixed Rate	One-Year ARM	Hybrid ARM
Fixed Rate	Reduction of at least **5 percent** (**existing guidance)** of P&I and MIP**; (new guidance replaces PITI**)	New interest rate at least **2 percentage points** below the current interest rate of the fixed rate mortgage (**existing guidance**)	Reduction of at least **5 percent** of P&I and MIP (**new guidance**)
One-Year ARM	New interest rate no greater than **2 percentage points** above the current interest rate of the ARM (**existing guidance**)	Reduction of at least **5 percent** (**existing guidance**) of P&I and MIP**; (new guidance replaces PITI**)	New interest rate at least **2 percentage points** below the current interest rate of the ARM (**new guidance**)
Hybrid ARM During Fixed Period	Reduction of at least **5 percent** of P&I and MIP (**new guidance**)	New interest rate at least **2 percentage points** below the current interest rate of the ARM (**new guidance**)	Reduction of at least **5 percent** (**existing guidance)** of P&I and MIP**; (new guidance replaces PITI**)
Hybrid ARM During Adjustable Period	New interest rate no greater than **2 percentage points** above the current interest rate of the Hybrid ARM (**new guidance**)	Reduction of at least **5 percent** (**existing guidance**) of P&I and MIP**; (new guidance replaces PITI**)	New interest rate at least **2 percentage points** below the current interest rate of the Hybrid ARM (**new guidance**)

Streamline Refinances – Certifications and Verifications

15. Certifications and Verifications for non-credit qualifying Streamline Refinances: If the lender uses an abbreviated Uniform Residential Loan Application (URLA) instead of a complete URLA, must the lender obtain employment and income certification?

No, FHA has eliminated employment and income certification, regardless of whether the lender uses an abbreviated URLA or a complete URLA.

16. Certifications and Verifications for non-credit qualifying Streamline Refinances: If assets are required to close, what documentation must the lender provide in the file to verify the assets? If yes, do they need to be shown on the application?

The lender must include a Verification of Deposit or a bank statement in the file. No, the assets are not required to be shown on the application.

Streamline Refinances – Use of TOTAL Scorecard

17. Streamline Refinances – Use of TOTAL Scorecard: Does this section only apply to Non-Credit Qualifying Streamline Refinance

Yes.

Non Credit Qualifying Streamline Refinances – Maximum Insurable Loan Balance

18. Maximum Insurable Loan Balance: On a non credit qualifying streamline without an appraisal, how much interest may the lender include in the payoff amount of the refinanced mortgage; may the lender add in up to 60 days of interest and up to one month of prorated mortgage insurance premium?

Unless the borrower pays off the refinanced mortgage on the installment due date, the payoff amount of the refinanced mortgage may include the unpaid principal balance, plus 60 days of interest, which consists of the interest due for the month prior to the closing of the refinancing mortgage, plus the interest due for the month in which the closing occurs, less refund (if any) plus new Upfront MIP.

19. Maximum Insurable Loan Balance May the lender include late fees, interest on the new mortgage, or other fees in the payoff amount of the refinanced mortgage?

No, the lender may **not** include any late fees, interest on the new mortgage, or other fees.

20. Maximum Insurable Loan Balance: If the lender does not exceed the insurable balance of the current FHA loan, may the lender finance costs on a non-credit-qualifying streamline refinance with an appraisal?

No, the lender may not finance costs on a non-credit-qualifying streamline with an appraisal, even if financing those costs does not result in a loan which exceeds the insurable balance of the FHA loan being refinanced.

Cash-Out Refinances – Acceptable Payment History

21. **Cash-Out Refinances – Acceptable Payment History:** Is it new policy that mortgages with less than 6 months of payment history are not eligible for cash out refinancing?

Yes, this is new written policy and is effective for case numbers assigned on or after April 18, 2011.

22. **Cash-Out Refinances – Acceptable Payment History:** Are properties owned free and clear eligible for cash out refinances, even though there is no payment history?

Yes, properties owned free and clear are eligible for cash-out refinances as stated in HUD Handbook 4155.1.3.B.2.a. However, other requirements such as using the lesser of sales price or appraised value depending on length of time of ownership apply. See 4155.1.3.B.2.e.

23. **Cash-Out Refinances – Acceptable Payment History:** Are properties acquired by inheritance eligible for cash out refinances?

Yes, properties acquired by inheritance are eligible for cash out refinances.

24. **Cash-Out Refinances – Acceptable Payment History:** Must a borrower who acquired a property by inheritance live in the property for six months before applying for a cash-out refinance?

No, a borrower is not required to occupy the property for a minimum period of time before applying for a cash-out refinance *provided that* the borrower does not treat the subject property as an investment property. For example, a borrower who inherits a property and moves into it directly without ever renting it is eligible for a cash-out refinance. However, if the borrower rents out the property, then the borrower is not eligible for a cash-out refinance until the borrower has occupied the property for at least 12 months.

Cash-Out Loan Transactions Which Pay off Land Contracts or Properties Subject to Ground Rents

25. **Cash-Out Loan Transactions Which Pay Off Land Contracts or Properties Subject to Ground Rents:** What is the maximum LTV for cash out loan transactions which pay off land contracts?

The maximum LTV is 85 percent of the lesser of either the:

- appraised value of the land and improvements, or
- total cost to acquire the property, which includes the original purchase price, plus any documented costs the borrower incurred for rehabilitation, repairs, renovation, weatherization, closing costs and reasonable discount points.

This is a clarification of existing policy. Please note that replenishing the borrower's own cash expended for repairs, improvements, renovation, or weatherization is *not* considered "cash back," provided that the borrower can document all out-of-pocket funds for these items.

26. **Cash-Out Loan Transactions Which Pay Off Land Contracts or Properties Subject to Ground Rents:** Does this also apply to contracts for deed or other similar financing arrangements in which the borrower does not have title to the property?

Yes, this also applies to contracts for deed or other similar financing arrangements in which the borrower does not have title to the property. This is a clarification of existing policy.

27. **Cash-Out Loan Transactions Which Pay Off Land Contracts or Properties Subject to Ground Rents:** What is the maximum LTV for cash out refinance transactions which pay off mortgages on properties subject to ground rents?

If the borrower purchases the ground rent, then the maximum LTV is 85 percent of the total cost to acquire the property. If the borrower does not purchase the ground rent, then the maximum LTV is 85 percent of the appraised value of the land and improvements. This is new policy.