

Q&As on Mortgagee Letter 2011-05

Q1: Are loan fees earned by the Mortgagee net of fees paid to third party brokers/correspondents?

A1: No, total loan fees (origination, placement net of lender legal cost, and trade profit) that exceed 5% of the endorsed loan amount are to be reported on a loan basis in accordance with the requirements of the Mortgagee Letter regardless of whether some portion of the fee was paid to a broker or correspondent.

Q2: If some or all of the trade premium was contributed as a source of cash towards payment of a prepayment penalty on the loan to be refinanced, is that to be netted out of the 5% since it was not "earned" by the lender?

A2: Application of trade premium to pay Borrower transaction costs (such as a prepayment penalty) is considered a "kickback" under MAP and thus is not allowed. The one exception is for Section 223(a)(7) loans where it must be fully disclosed within the application with a letter attachment to the financing plan submitted to the HUD Field Office identifying trade profit as a source of funds to close, and on the Request for Endorsement of Credit Instrument Certificate of Mortgagee, Mortgagor and General Contractor, Form FHA 2455. Even in cases of (a)(7) refinancings, the entire trade premium should be included in the total fees and reported in the financial statement if reporting is otherwise required by the Mortgagee Letter .

Q3: The Mortgagee Letter published January 10, 2011, stated it was effective immediately. Are Annual Financial Statements submitted for the fiscal/calendar year ending December 31, 2010, required to report total loan fees that exceed 5% on loans over \$2,000,000 that closed during the past year?

A3: Yes, the requirements of the Mortgagee Letter apply to any Annual Financial Statements that are submitted (by Multifamily Mortgagees, including non-supervised Mortgagees) after the January 10, 2011 effective date. A revision to Chapter 7 of the IG Audit Guide (Handbook No: 2000.04, REV-2, CHG-9) was issued January 19, 2011.

