



Seller Guide Update



SEL-2024-038: Reminder: Commissions Paid to Real Estate Agents & FAQ

September 20, 2024

Correspondent Lending

Housing Finance Agency (HFA)

Summary

Underwriting/Delivery	
<input checked="" type="checkbox"/>	Corr. Delegated
<input checked="" type="checkbox"/>	Corr. Non-Delegated
<input checked="" type="checkbox"/>	Corr. EZD
<input checked="" type="checkbox"/>	Corr. Mandatory
<input checked="" type="checkbox"/>	HFA Delegated
<input checked="" type="checkbox"/>	HFA Non-Delegated
Products	
<input checked="" type="checkbox"/>	Conv. (Freddie)
<input checked="" type="checkbox"/>	Conv. (Fannie)
<input checked="" type="checkbox"/>	Conv. (Portfolio)
<input checked="" type="checkbox"/>	FHA
<input checked="" type="checkbox"/>	VA
<input checked="" type="checkbox"/>	Rural Development

As a reminder, U.S. Bank's **SEL-2024-028** (7/12) notified lenders of the nationwide settlement that started in August. This settlement mandates that compensation for real estate agents cannot be listed on multiple listing services (MLS) and that buyer-side real estate agents have to "enter into written agreements with their buyers."

Under the new requirement, the buyer signs an agreement with their agent at the beginning of their home search, laying out the services the agent would perform and the fee they would be paid. Separately, the seller would enter into an agreement with their agent when the home is listed, laying out the services to be performed and the fee to be paid. When a buyer makes an offer, they would specify both the price being offered and the fee the buyer's agent expects to be paid. The buyer, seller, and their agents would settle on the final terms of the sales contract.

U.S. Bank will continue to monitor and assess the impact of the National Association of Realtors (NAR) settlement and other real estate agent commission lawsuits to determine if any further updates are necessary; lenders are encouraged to review **SEL-2024-028** for details. Please consult your legal counsel with any additional questions you may have.

Frequently Asked Questions (FAQ): Due to the number of questions on this topic, we have created the following **FAQs** outlining suggested best practices to address common inquiries.

What are the current guidelines from FNMA, FHLMC, VA, and FHA regarding buyers paying for real estate commissions?

While limited guidance has been given by the agencies, lenders are encouraged to review:

- Fannie Mae [Selling Notice](#)
- Freddie Mac [Industry Letter](#)
- VA – [Circular 26-24-15](#) and [Circular 26-24-15 Change 1](#)
- FHA – [Info 2024-12](#)

What fees are included in the buyer broker commission fees?

- Commission fees paid to the buyer's agent, broker admin fees, etc.

Will U.S. Bank allow for the borrower to pay the buyer broker commission fee on conventional, FHA, VA and RD loans now?

- Yes, however, the acceptable source of funds to cover the commission costs must be documented.

Can the borrower pay part of the seller's commission fees?

- Yes, however, the acceptable source of funds to cover the commission costs must be documented.

Can the seller pay the borrower's commission owed to their realtor?

- Yes, but does not need to be included in the interest party contributions as long as the practice is in accordance with common and customary practices within the local market.

Is the commission considered a closing cost?

- Yes, but does not need to be included in the interest party contributions as long as the practice is in accordance with common and customary practices within the local market.

How can the borrower pay the commissions?

- If borrower is paying it, it must be confirmed that the funds are from an acceptable source and must be included on the Closing Disclosure (CD).



**Reminder:
Commissions
Paid to Real
Estate Agents &
FAQ, continued**

Would the borrower be able to obtain an installment loan from the real estate agent (i.e. pay the agent a monthly fee for a period of time) or some other third party?

- For VA, yes, but any amount paid by the borrower pursuant to an installment loan would need to be factored into the underwriting process and DTI calculation.
- For Agency, Portfolio and FHA, no, this would be an unsecured loan and not allowed.

Assuming the borrower is coming in with the required down payment, can the commission fee on the CD be covered by either lender premium credit or seller concessions?

- Yes, it must be confirmed that the funds are from an acceptable source and must be included on the CD.

The borrower is the realtor, can they pay their own commission?

- Yes, it must be confirmed that the funds are from an acceptable source and must be included on the CD.

If a family member was the realtor, can buyer pay their family member/agent commission?

- Yes, it must be confirmed that the funds are from an acceptable source and must be included on the CD.

Is there a max commission that borrowers or seller can pay?

- No, these are negotiated and agreed upon with the agents.

If the borrower pays part or all of the commission fees, are there any special documentation requirements?

- As is current practice, all fees must be confirmed from an acceptable source and must be included on the CD. Documentation must be provided to indicate who is paying the commission fee and specify the amount being paid.

Is the buyer agreement part of the contract, or does it have to be a separate addendum?

- Agency: Agency guidelines state that the buyer agreement can be part of the contract or an addendum. It can be renegotiated when the Sales contract is prepared.
- FHA: FHA guidelines state a separate certification/addendum is not needed if the sales contract contains a statement that there are no other agreements between parties and the terms constitute the entire agreement between parties and all parties are signatories to the sales contract submitted at the time of underwriting or when the closed loan package is submitted to U.S. Bank for purchase.
- VA: VA guidelines consider the buyer-broker representation agreement to be part of the sales contract package. VA expects lenders to upload the agreement as part of the package.

Does the buyer agreement need to be provided in the loan submission to U.S. Bank?

- Agency: Per Agency guidance, if it is made part of the sales contract, it should be provided in the loan submission to U.S. Bank per current requirements.
- FHA: Per FHA guidance, a separate certification/addendum is not needed if the sales contract contains the language outlined above which is provided to U.S. Bank per current requirements.
- VA: VA considers the buyer-broker agreement to be part of the sales contract which is provided to U.S. Bank per current requirements.

Can part of the DPA funds be used to pay the buyer's agent fee?

- Refer to the specific DPA guidelines for requirements. For HFAs, please refer to the specific HFA for guidelines.

Questions



Correspondent: Please contact your Account Executive or the Client Support Area at 800.200.5881, option 1.

HFA: Please contact the Housing Finance Agency Hotline at 800.562.5165, option 1 for the HFA Customer Care Team.