



## **INDEPENDENT DISPUTE RESOLUTION PROCESS**



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## Introduction

Under certain circumstances, Fannie Mae may require a seller or servicer (the current servicer or prior servicer) or other party responsible for the selling representations and warranties or servicing duties or obligations that is responsible for the alleged defect identified in the demand ("lender") to repurchase a mortgage loan or acquired property, remit a make whole payment (if the property has been liquidated) or to pay an indemnification demand as a result of a breach of the Lender Contract. The following briefly lists the options and processes that are in place to resolve all such demands:

- The lender complies with the demand and either remits the amount of the indemnification demand, repurchases the loan or property, or remits the make whole payment.
- Fannie Mae allows the lender to correct certain, breaches in the time and manner described in the Lender Contract.
- Fannie Mae may elect to enter into a repurchase alternative with the lender.
- The lender may appeal the demand.
- If the first appeal is denied and the lender has additional material information, the lender may submit a second appeal.
- If all appeals are denied, the lender may initiate the impasse process.
- If the impasse process does not resolve the demand, the lender may initiate the management escalation process.
- If the management escalation process does not resolve the demand, the lender may initiate the Independent Dispute Resolution process.

The purpose of this document is to describe the steps and legal requirements involved in the appeal, impasse, management escalation, and Independent Dispute Resolution processes. It is intended for use by any responsible party to these demands, be it a lender, servicer, or Fannie Mae. The document is incorporated by reference into both the Fannie Mae *Selling Guide* and *Servicing Guide* and, as a result, is part of the Lender Contract.

Refer to the *Selling* and *Servicing Guides* for additional information about the options or steps listed above that are not covered by this document.



# Part A. APPEAL, IMPASSE, AND MANAGEMENT ESCALATION PROCESSES

## Section 1.0 Appeal Process

A lender may submit a written appeal of a demand from Fannie Mae by following the steps described in this table.

**NOTE:** *The lender may provide a correction of an alleged defect at any time during the appeal process.*

Appeal Process	Lender Action	Fannie Mae Action						
<b>First appeal</b>	<p>The lender must submit a written appeal within 60 days of receiving a demand from Fannie Mae. The appeal must contain all supporting documentation related to the appeal at one time in one consolidated case file package, and identify in the appeal the section of the <i>Guide</i> and/or Lender Contract that supports the appeal.</p> <p>Fannie Mae may identify a shorter or longer appeal period in the demand based on circumstances at the time.</p> <p><b>Note:</b> Written notification of a lender’s intention to submit a complete appeal package at some future date does not satisfy the submission requirement.</p> <p>If Fannie Mae receives no written appeal within the 60-day period, it will be assumed that the lender does not contest the demand, and the lender will have no further right to challenge the demand or to continue with the impasse, management escalation, or IDR processes.</p>	<p>Fannie Mae must respond to the lender’s written appeal within 60 days of its receipt.</p> <p>If Fannie Mae fails to respond within 60 days of receipt of the lender’s appeal, Fannie Mae will have no further right to seek a remedy of the breach(es) identified in the demand, other than seeking indemnification for any third-party claims.</p>						
	<table border="1"> <thead> <tr> <th>If the first appeal is denied by Fannie Mae and...</th> <th>Then...</th> </tr> </thead> <tbody> <tr> <td>the lender has no additional material documentation or information to submit for a second appeal</td> <td>                     the lender must either                     <ul style="list-style-type: none"> <li>▪ initiate the impasse process within 15 days (described below), or</li> <li>▪ comply with the demand.</li> </ul> </td> </tr> <tr> <td>the lender has additional material information</td> <td>the lender may submit a second appeal as outlined below.</td> </tr> </tbody> </table>		If the first appeal is denied by Fannie Mae and...	Then...	the lender has no additional material documentation or information to submit for a second appeal	the lender must either <ul style="list-style-type: none"> <li>▪ initiate the impasse process within 15 days (described below), or</li> <li>▪ comply with the demand.</li> </ul>	the lender has additional material information	the lender may submit a second appeal as outlined below.
	If the first appeal is denied by Fannie Mae and...		Then...					
	the lender has no additional material documentation or information to submit for a second appeal		the lender must either <ul style="list-style-type: none"> <li>▪ initiate the impasse process within 15 days (described below), or</li> <li>▪ comply with the demand.</li> </ul>					
the lender has additional material information	the lender may submit a second appeal as outlined below.							
<p>Complying with the demand may involve:</p>								



Appeal Process	Lender Action	Fannie Mae Action
	<ul style="list-style-type: none"> <li>▪ completing the repurchase of the mortgage loan or property;</li> <li>▪ submitting the indemnification or make whole payment;</li> <li>▪ executing any agreement required by an accepted repurchase alternative; or</li> <li>▪ if the repurchase involves an active mortgage loan that will be involved in a servicing transfer, notifying Fannie Mae of the name of the new servicer and the date of the servicing transfer.</li> </ul>	
<b>Second appeal</b>	The lender must submit a second appeal within 15 days of receiving a denial of the first appeal if it wants to challenge the existence of the defect in the demand.	<p>Fannie Mae must respond to the lender's second written appeal within 60 days of its receipt.</p> <p>If Fannie Mae fails to respond within 60 days, Fannie Mae will have no further right to seek a remedy of the breach(es) identified in the demand, other than seeking indemnification for any third-party claims.</p>

## **Section 2.0 Impasse and Management Escalation Processes**

The steps in the impasse and management escalation processes for demands are described in the following table.

**NOTE:** *The lender may provide a correction of a defect at any time during the impasse process in accordance with the Guides. No new information, facts, documents, or corrections may be submitted during the management escalation process.*

<b>Impasse and Management Escalation Processes</b>	<b>Lender Action</b>	<b>Fannie Mae Action or Further Action by the Parties</b>
<b>Impasse Process</b>	<p>At the conclusion of the first or second appeal, if the lender wants to challenge the existence of the defect in the demand, it must initiate the impasse process in writing to Fannie Mae (which can include electronic submissions) within 15 days of receiving Fannie Mae's denial of the first or second appeal.</p> <p><b>Note:</b> If Fannie Mae receives no written request for impasse within the 15-day period following Fannie Mae's denial, the lender will have no further right to challenge the</p>	<p>Fannie Mae and the lender will have 30 days in which to attempt to resolve the dispute, unless both parties agree to a longer period of time.</p> <p><b>Note:</b> All information, facts, and documents that the lender or Fannie Mae want to be considered in any subsequent IDR process must be submitted to the other party no later than the end of the impasse period or such</p>



	<p>existence of the defect identified in the demand or continue with the impasse, management escalation, or IDR processes.</p>	<p>information will not be considered in a subsequent IDR proceeding.</p> <p>At the conclusion of the impasse process, if the lender and Fannie Mae reach agreement, then within 30 days:</p> <ul style="list-style-type: none"><li>▪ Fannie Mae will rescind or withdraw the demand, or</li><li>▪ the lender must implement the agreed-upon remedy.</li></ul>
<b>Management Escalation Process</b>	<p>At the conclusion of the impasse process, if Fannie Mae has reaffirmed the demand and the lender wants to continue to challenge the existence of the defect in the demand, it must initiate the management escalation process in writing (which can include electronic submissions) within 15 days after conclusion of the impasse process by notifying its Fannie Mae officer contact that it wants to initiate management escalation.</p> <p><b>Note:</b> If Fannie Mae receives no written request for management escalation within the 15-day period following the impasse process, the lender will have no further right to challenge the demand and will be obligated to comply with its terms.</p> <p>If, at the end of the management escalation process, Fannie Mae has reaffirmed the demand, the lender may initiate the IDR process.</p>	<p>Within 30 days of receipt of the lender's initiation of the management escalation process, Fannie Mae must involve its designated officer in a review of the dispute.</p> <p>Fannie Mae and the lender will have 30 days in which to attempt to resolve the dispute, unless both parties agree to a longer period of time. If the lender and Fannie Mae reach agreement then within 30 days:</p> <ul style="list-style-type: none"><li>▪ Fannie Mae will rescind or withdraw the demand, or</li><li>▪ the lender must implement the agreed-upon remedy.</li></ul>



## Part B. Independent Dispute Resolution (IDR) Process

### Introduction

The IDR process addresses loan-level demands and whether alleged breach(es) of the Lender Contract exist(s) at the time the IDR proceeding commences. The IDR process is available for disputes that are not resolved through the appeal, impasse, or management escalation processes, as described in this document. The sections below provide additional details on who is eligible for IDR, the roles and responsibilities of involved parties, as well as general IDR proceedings. The IDR process is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

### Section 1.0 Parties Involved in IDR

This section defines the parties involved in the IDR process, including the lender and Fannie Mae. Roles and responsibilities, as well as necessary qualifications, are also described.

#### **Section 1.1. IDR Program Administrator**

The IDR program administrator is a provider of conflict management services chosen by Fannie Mae to manage the IDR process. The IDR program administrator will establish and maintain a roster of potential neutral parties that meet the general and specific neutral qualifications described below in Section 1.2, Neutrals. The lender or Fannie Mae (as the context indicates, either “party” or “parties”) who initiates the IDR process will work directly with the IDR program administrator to start, maintain, and complete the IDR process.

#### **Section 1.2. Neutrals**

**Definition and Authority.** Neutrals are independent third parties chosen from the IDR program administrator’s roster that conduct and provide a formal decision on any IDR proceeding. The roster of qualified neutrals will be reviewed and updated periodically by the IDR program administrator.

The neutral will determine whether, based on the factual record set forth in the case file packages, a breach of the Lender Contract existed at the time the IDR proceeding commenced. The neutral will not address attempted or offered remedies or any other issues related to or arising out of the origination, sale, or servicing of the mortgage loan.

**Qualifications and Expectations.** To be included on the IDR program administrator’s roster of neutrals, a neutral must meet the following requirements:

- be an attorney who:
  - was admitted to the practice of law for at least 10 years,
  - is a member in good standing of a state bar or on the faculty of an accredited law school,
  - has been a professional neutral in civil/commercial mediation or independent dispute resolution practice for a minimum of five years, and
  - regularly serves as professional neutral or a retired judge;
- received training from the College of Commercial Arbitrators or the American Arbitration Association, JAMS Institute, Chartered Institute of Arbitrators, or similar professional organization providing training for professional neutrals;
- agreed in writing to adhere to the ABA Code of Ethics for Arbitrators in Commercial Disputes;
- completed five hours of independent dispute resolution related continuing education within the prior two years;
- served as a neutral on at least five independent dispute resolution cases;
- has experience in connection with the resolution of issues and/or disputes concerning residential real estate lending and mortgage finance, and preferably some experience with the secondary mortgage market; and





- agree to follow the IDR process described in this document.

A neutral may not have had any business relationship (other than participation in previous IDR proceedings) with any participant in the IDR proceeding within the two-year period prior to the commencement of an IDR proceeding, unless mutually agreed upon by Fannie Mae and the lender. This prohibition includes:

- any outside counsel hired by either of the parties; and
- parents, subsidiaries or affiliates of the corporate participants.

Once a dispute is submitted to the IDR program administrator, the IDR program administrator will run the appropriate conflict checks. The neutral must disclose no later than during the administrative telephone call (described below) the existence of any interest, relationships, or circumstances that are likely to affect impartiality or that might reasonably create an appearance of bias.

**Selection of a Neutral.** The neutral will be selected as described in Section 2.2, Selection of Neutral.

If the lender or Fannie Mae believes that the selected neutral cannot be impartial, it must alert the other party and the IDR program administrator. The IDR program administrator, with input from the non-objecting party, will decide whether the neutral should be recused. If so, the IDR program administrator will provide a new slate of qualified neutral candidates as described in Section 2.2, Selection of Neutral, and timelines for the IDR process will be adjusted accordingly.

### **Section 1.3. Subject Matter Experts**

The lender and Fannie Mae may choose one or more subject matter experts (“SME(s)”) to be involved in the IDR proceeding. SMEs may be attorneys (both in-house and outside counsel) and staff within the organization. The SME must be willing to testify during the hearing presided over by the neutral. The SME’s testimony is limited to information that has previously been shared in writing between the parties during the appeal or impasse processes. They may also testify to their own opinions derived from such information based on their experience, technical background, and/or industry knowledge. Each party must disclose any SME it intends to use in the IDR proceeding in its case file package.

**Qualifications and Expectations.** Each disclosure of a SME must be accompanied by a written report containing:

- a complete statement of all of the SME’s opinions and the basis and reasons for those opinions with regard to the mortgage loan at issue,
- the facts or data considered by the SME in forming the opinions,
- any exhibits that will be used to summarize or support the SME’s opinions, and
- the SME’s qualifications.

In addition, a SME that is not employed by the parties must submit:

- a list of all cases or arbitrations in which the SME has testified in the previous four years, and
- a statement of the compensation paid (or to be paid) to the SME in connection with the IDR proceeding.

Multiple SMEs are allowed only in the event that distinct areas of expertise are required for a party to support its position during the IDR process. A neutral may not retain a SME.

**Challenging the Choice of a Specific SME.** A party is allowed to challenge the selection of any SME on the grounds that expert testimony is irrelevant, unreliable, or lacks an adequate basis, or that the designated SME lacks the requisite qualifications to offer an expert opinion(s). Such challenge must be in a document included in the case file package that details the claimant’s position regarding the validity of a demand (“position paper”) or occur at the hearing,

**Questioning a SME.** Persons designated as SMEs must be available to testify at the hearing and answer questions from the neutral and the other party during the hearing if requested in advance. Notice of intent to question a SME will be provided no later than seven days prior to the hearing. If a SME fails to testify after receiving notification or is called to



testify and fails to do so, the SME report will be struck from the IDR submissions and disregarded. If a party chooses to use a non-employee as a SME, the SME must agree in advance to testify if requested by the neutral or the other party.

## **Section 1.4. Parties Eligible to Initiate IDR**

This section describes lender eligibility requirements and Fannie Mae's responsibilities in initiating IDR proceedings. Lenders and Fannie Mae have the right to initiate an IDR proceeding if all applicable timelines and requirements in Part A, Appeal, Impasse, and Management Escalation Processes are met.

**Lenders.** The IDR process will only be available to lenders that have not been suspended, disqualified, or terminated by Fannie Mae ("eligible lenders"). Lenders that have received a formal notice of default from Fannie Mae are not eligible to utilize the IDR process. The suspension, disqualification or termination of a lender is not subject to the IDR Process. The lender's ability to participate in the IDR process cannot be assigned to another party, such as an insurance company.

In addition, the IDR process will not be available to a lender that:

- has failed to comply on a timely basis with an IDR award related to any mortgage loan (or loans) that have been through the IDR process;
- has failed to comply on a timely basis with any demand after the time for challenging the demand through the appeal process, impasse process, management escalation process, and IDR process, as applicable, has expired; or
- has any outstanding amount past due to any IDR program administrator.

Lenders may initiate an IDR proceeding only if and when the dispute remains unresolved after conclusion of the management escalation process. Lenders may elect to be represented during IDR proceedings by in-house counsel, business personnel, outside counsel, or other retained third party bound by the confidentiality requirements described in Section 5.0, Confidentiality.

**Fannie Mae.** Fannie Mae may initiate an IDR proceeding only if and when the dispute remains unresolved after conclusion of the management escalation process or upon the lender's failure to challenge a demand as required at any stage of the appeal, impasse, or management escalation processes. Fannie Mae will likely be represented during any IDR proceeding by in-house counsel, business personnel, outside counsel, or other retained third parties bound by the confidentiality requirements in Section 5.0, Confidentiality.

**Correspondents.** Correspondents are brokers, originators, or others that were involved in the origination or sale of the subject mortgage loan which the correspondent sold to the lender. While the correspondent may have liability to the lender, the correspondent may not initiate IDR because it is the lender that is the responsible party to the IDR proceeding. While the correspondent may not initiate IDR, it may participate with the lender's consent. Any award of the neutral shall be issued to the lender. It is the obligation of the lender to comply with the terms of the award of the neutral, notwithstanding any dispute it may have with the correspondent, including the correspondent's failure to reimburse the lender.

## **Section 2.0 IDR Process and Timelines**

The IDR process is limited to resolving factual loan-level disputes between an eligible lender and Fannie Mae involving an alleged breach of the Lender Contract. The IDR process addresses loan-level demands and whether the breach(es) of the Lender Contract exist(s) at the time IDR commences. If a dispute regarding a demand is not resolved through the appeal, impasse, or management escalation processes (and if litigation has not been initiated by either party), an IDR eligible lender may pursue the matter by initiating the IDR process within 15 days of the end of the management escalation period. If the lender has not initiated the IDR process within 15 days of the end of the management escalation period, Fannie Mae may initiate the IDR process by providing written notice to the lender no later than 6 months after this 15-day period has concluded.

### **Section 2.1. Initiation of IDR**

In order to initiate IDR proceedings, the claimant will submit via email a request for IDR by submitting an executed [Retainer Agreement](#) to both the IDR program administrator and the respondent. This submission defines the "IDR initiation date." The [Retainer Agreement](#) will include the retainer of the IDR program administrator, the terms under which the IDR program



administrator will manage the arbitration, the parties' waiver of the right to litigate the dispute, a tolling agreement, and any other requirements of the IDR program administrator.

The [Retainer Agreement](#) will be sent via email simultaneously to the designated parties based on the following:

If...	Then...	And...
The lender is the claimant,	The lender must send the <a href="#">Retainer Agreement</a> to <ul style="list-style-type: none"> <li>▪ the email address designated by the IDR program administrator on the <a href="#">Retainer Agreement</a>, and</li> <li>▪ Fannie Mae at <a href="mailto:Independent_Dispute_Resolution@fanniemae.com">Independent_Dispute_Resolution@fanniemae.com</a></li> </ul>	The respondent must then submit an executed copy of the <a href="#">Retainer Agreement</a> to the IDR program administrator and to the claimant.
Fannie Mae is the claimant	Fannie Mae must send the <a href="#">Retainer Agreement</a> to <ul style="list-style-type: none"> <li>▪ the email address designated by the IDR program administrator on the <a href="#">Retainer Agreement</a>, and</li> <li>▪ the lender's email address Fannie Mae used when it sent the initial demand.</li> </ul>	

**Fees to Commence IDR.** The claimant will submit all of the following items with the [Retainer Agreement](#) to the IDR program administrator:

- a check for the filing fee payable to the IDR program administrator (the "filing fee"). The amount of the filing fee is identified in the [Retainer Agreement](#).
- a check for the retainer fee payable to the IDR program administrator as an estimated fee to pay both the neutral's fee and the IDR program administrator's fee (the "retainer fee"). The amount of the retainer fee is identified in the [Retainer Agreement](#).

**Custodial Account.** The IDR program administrator will deposit the retainer fee into a custodial account held at a federally insured institution. The accounts should be captioned: "[insert IDR Program Administrator's name], as agent, trustee, and/or bailee for the benefit of Fannie Mae and/or various lenders (Custodial Account)" (the "custodial account"). The IDR program administrator must keep a record of the amount of the retainer fee paid per IDR matter. Any interest paid on the custodial account must be made available for payment of the IDR program administrator's fee and the neutral's fee for any matter that exceeds the retainer fee paid.

**Litigation.** The IDR process is not the sole means for resolving disputes about demands. Nothing prohibits either party from initiating litigation to resolve a demand dispute prior to commencing IDR. Neither party may initiate the IDR process if either party has previously initiated litigation of any kind to resolve the demand dispute. If one party initiates the IDR process, however, the other party may not initiate litigation with respect to the subject demand(s) until the IDR process is complete and then may only initiate litigation if the non-prevailing party fails to comply with the neutral's decision in a timely manner.

## Section 2.2. Selection of Neutral

The IDR program administrator will provide a list of five qualified neutrals to Fannie Mae and the lender no later than seven days after the IDR initiation date and only after the IDR program administrator has completed the necessary conflict checks. Each party may request up to three references for each proposed neutral from the IDR program administrator. If references are requested before the list of neutrals is provided, the IDR program administrator will provide the name and contact phone number or email address for the list of references to the requesting party the same day it provides the list of neutrals.



Otherwise, if references are requested, the IDR program administrator will provide the list of references no later than two days after the reference list is requested.

Each party may strike two names and rank the remaining candidates in order of preference from the list of neutrals provided by the IDR program administrator. Any strikes or rankings must be provided to the IDR program administrator by Fannie Mae and the lender within five days of receiving the list. The IDR program administrator will choose the neutral based on the strikes and rankings received from the parties. If a party does not provide any strikes and rankings to the IDR program administrator by the deadline, the IDR program administrator will assume that such party has no preferences.

### **Section 2.3. Administrative Telephone Conference Call**

Within seven days of the date the neutral is selected, the IDR program administrator will, in consultation with the parties by telephone or email, schedule an initial “administrative telephone conference call” to be held with the neutral and the parties. The administrative telephone conference call should occur within 14 days of the date the neutral is selected, unless otherwise agreed to by the parties and the neutral. The purpose of the call is to:

- review logistical issues,
- make sure the parties understand the IDR process and applicable deadlines,
- address any initial issues or questions that the parties have, and
- set the ground rules for the hearing and any issues that arise before the hearing.

During the initial administrative telephone conference call the parties and their representatives should identify themselves to the neutral and each other by name and title, and allow the neutral and the parties to ask any questions they may have about the IDR process. Additionally, during the initial administrative telephone conference call the neutral should briefly explain:

- the importance of written submissions;
- the relationship between the position paper and SME report, if any;
- who may speak and what arguments may be raised during the hearing if one is convened (only those arguments that have been made in writing up through the position paper and SME report); and
- any other pertinent issues.

The neutral, in conjunction with the parties, should also tentatively identify dates when the hearing may be scheduled. Additional topics for the initial administrative telephone call may include the format (electronic or hard copy) and the neutral’s preferred method for the parties to submit documents, as well as whether:

- the matter would benefit from each side identifying significant documents to assist the neutral in focusing on the most important documents in the case file package;
- the parties could jointly assist the neutral in identifying duplicate documents submitted with their case file packages to streamline the neutral’s review;
- the matter might benefit from video conferencing and whether video conferencing would be cost effective and feasible; and
- the parties might want to consider and jointly present to the neutral for his or her review, an alternative or more streamlined method of presenting their cases.

### **Section 2.4. Case File Package**

**Submission of Case File Package.** The claimant must submit its case file package to the neutral and to the respondent in an appropriately secure manner within 21 days of the initial administrative telephone conference call described in Section



2.3, Administrative Telephone Conference Call. Fannie Mae will send its case file package to the IDR program administrator via encrypted email given that it may include non-public information.

**NOTE:** *The current IDR program administrator has a portal that a lender may elect to use if it is able to negotiate acceptable terms with the IDR program administrator in a separate agreement between the two parties.*

The respondent must submit its case file package within 21 days of receipt of the claimant's case file package. The claimant may submit a reply (which may be no longer than five double-spaced pages) (the "reply") to the respondent's case file package within 14 days of receipt of the respondent's case file package, solely to address issues raised in the respondent's case file package. In the event that any new issues are raised in the claimant's reply, or at the request of the neutral, the respondent may be allowed to file their own reply (not to exceed five double-spaced pages) within seven days of its receipt of the reply. The neutral may, at his or her option, request that the IDR program administrator provide the neutral with the case file packages in hard copy format.

**Contents of Case File Package.** The case file package will include a position paper detailing the claimant's position regarding the validity of the demand. Fannie Mae and the lender can include in their respective position paper only those facts relevant to the mortgage loan and demand in question. The parties cannot include facts or loan patterns related to how either party or how another government sponsored enterprise or another lender might have dealt with similar disputes or issues on other mortgage loans in the past. For example, Fannie Mae cannot mention in a position paper that the lender previously repurchased mortgage loans with similar defects or patterns, instead of appealing the repurchase requests. Similarly, the lender cannot mention that Fannie Mae has retained mortgage loans with similar defects or patterns in the past.

Other than the position paper and any SME reports, the information and documents provided in the case file package and during the hearing must be limited to information and documents previously exchanged in writing between the parties prior to or during the appeal process or the impasse process. Any additional materials not previously exchanged in writing between the parties prior to or during the appeal process or the impasse process cannot be considered by the neutral. However, the parties may raise additional arguments during the IDR process that are based on the information and documents previously exchanged.

In addition to the position paper, the case file package may include, but is not limited to, the following:

- information, including the loan file and documentation previously shared in writing between the parties prior to or during the appeal process or the impasse process;
- relevant provisions of the Lender Contract and the contents of the loan file;
- SME report(s). A SME report, if any, must be prominently identified on the first page as the SME report and include the name of the SME. Opposition to a SME in whole or in part, if any, must be contained in a clearly identified written document, such as the opposing party's position paper or an opposing SME report, that must be filed with the opposing party's first submission following the sponsoring party's identification of the SME (either the response or reply); and
- The documents described in Appendix A.

**Additional Requirements regarding Case File Packages.** The parties must bates stamp each page of the case file package with a unique number for ease of reference in written submissions as warranted and during the hearing. All exhibits must include a cover sheet with an exhibit number and all pages of exhibits must be bates stamped. It is recommended that each party precede the bates stamp number with an identifying name or abbreviation such as "FAN-00001" where, for example, FAN refers to Fannie Mae and "00001" refers to the first page of the first document in the submitted set of documents.

If a party files subsequent submissions or a reply, it should endeavor not to resubmit previously submitted documents. Instead, it should reference the bates stamp numbers from the original submission or resubmit only that portion of the original submission that is at issue. Additionally, if, for example, the claimant files additional exhibits with a reply, those documents should use sequential exhibit and bates numbers following the number after the last numbered exhibit and page





previously submitted. References within position papers must be made to exhibit or bates page numbers. All documents must be clearly marked “CONFIDENTIAL” for the purposes of IDR.

## **Section 2.5. Issues Prior to Hearing**

If issues arise that the parties are not able to resolve prior to the hearing, a party may send an email to the IDR program administrator and the other party identifying the issue and requesting a conference call with the neutral to address the issue.

## **Section 2.6 Scheduling Call**

Within seven days of the filing of respondent’s case file package, the neutral (or the IDR program administrator, at the request of the neutral) will initiate and hold a “scheduling call” with Fannie Mae, the lender, and the correspondent, if any. The purpose of the scheduling call is for the parties to address any pending matters and to discuss the scheduling of the hearing with Fannie Mae, the lender, and the correspondent, if any. Additionally, during the scheduling call the parties and the neutral should indicate whether they believe, after a review of the case file packages and the reply (if any), a hearing is necessary. If the parties and the neutral agree that a hearing is not necessary, the neutral will evaluate the dispute based solely on his or her review of the case file packages and the reply (if any). However, if either party or the neutral requests a hearing, one will be held. The date for the scheduling call can be extended briefly by agreement of the parties or at the request of the neutral.

In the event that a hearing is required, the parties and the neutral will select a date for the hearing during the scheduling call. The hearing, if any, will take place within 21 days of the scheduling call unless there is an unavoidable conflict and the neutral, Fannie Mae and the lender consent to a brief extension that ordinarily should not exceed 10 days. During the scheduling call, the parties, including the neutral, should give a preliminary indication of whether they intend to question the other party’s SME, if any.

## **Section 2.7 Hearing**

The hearing will be conducted by telephone unless the neutral requests, or both parties agree to, a videoconference. At the hearing, each party will have the opportunity to explain its case by presenting a brief summary overview of its positions. The neutral will have the opportunity to ask questions of the parties and any SME, and, subject to Section 1.3, Subject Matter Experts, each party will have the opportunity to question the other party’s SME(s), if any. No direct or rebuttal testimony will be permitted. Neither the lender nor Fannie Mae will be allowed to call its own witnesses for testimony as each will establish its positions in the case file package.

Questioning of any SME (not including any questions by the neutral) will be limited to 30 minutes. After all testimony is taken, each party will also be permitted to make a closing argument; the respondent will go first, followed by the claimant, and then a short rebuttal by the respondent. The length of the conference call, the order in which statements or questioning takes place, and requests for extensions of the proposed time allotments are left to the discretion of the neutral and determined by the neutral based on factors such as the nature of the demand, the number of SMEs, and the complexity of the issues under consideration.

The parties understand that the IDR process is designed to control costs and reduce the time needed for resolution of disputes. Discovery is not permitted and the IDR process does not allow either party to compel testimony. No other testimony besides a SME will be permitted, including authors or recipients of documents, even if those documents are relied on by a SME.

## **Section 2.8. Post-Hearing Briefing**

No post-hearing briefing will be allowed unless requested by the neutral. Any such briefing may, at the discretion of the neutral, briefly extend the timeline for the neutral to issue a decision.

## **Section 3.0 Award**

Within 21 days of the hearing (or if no hearing was held, within 21 days of the scheduling call), the neutral will determine whether the breach(es) alleged in the demand existed at the time IDR commenced, based upon its review of the case file packages and the information presented during the hearing, if a hearing was conducted.

The award will be final and binding upon and enforceable against the lender and Fannie Mae. The award is binding and may be entered and enforced in any court having jurisdiction over the parties. The neutral’s award will also include a short



written opinion briefly summarizing the reasons for the decision regarding whether or not the breach(es) alleged in the demand exist at the time IDR commenced. The goal of the opinion is to give the parties insight into the basis and reason for the neutral's award.

The neutral is not permitted to address remedies or any other issues either related to or arising out of the origination, sale, or servicing of a mortgage loan.

### **Section 3.1. Compliance with Award**

If the neutral determines that the breach(es) alleged in the demand existed at the time the IDR proceeding commenced, the lender must comply with the terms of the demand within 30 days of the date the neutral issues its award. If the neutral determines that the breach did not exist at the time the IDR proceeding commenced, the demand must be rescinded or withdrawn by Fannie Mae within 30 days of the date the neutral issues its award.

### **Section 3.2. Miscellaneous**

**No Precedential Value.** The IDR process will be case-specific and no award will apply or set precedent for other demands in any proceeding.

**No Impact.** The IDR process:

- will have no impact on Fannie Mae's rights regarding any actions (other than with respect to a specific mortgage loan as determined by the IDR process) Fannie Mae may independently take with respect to a party Fannie Mae believes is responsible for a breach, including, without limitation, the suspension or termination of a lender's eligibility to do business with Fannie Mae; and
- subject to the terms of the Lender Contract, will have no impact on the lender's right to restrict the volume of its sales to Fannie Mae or to modify its relationship with Fannie Mae.

**Status of Loan.** The status of the mortgage loan in terms of whether it is performing or in default under the Lender Contract has no effect on whether a violation or breach existed at the time the IDR proceeding commenced.

**No Ex-parte Communications.** The neutral and the IDR program administrator will not have any ex-parte communications with Fannie Mae or the lender, except for administrative or scheduling matters.

## **Section 4.0 Fees**

The IDR process is designed to be cost-effective while allowing a timely but thorough review by the neutral. Any fees, costs, or expenses incurred by a party in connection with the IDR process will be borne by such party, except as otherwise specified in this section.

### **Section 4.1. Payment of IDR Administrative Fee and Neutral Retainer**

After the arbitration has been completed, the neutral must within 10 days of the hearing generate an invoice for the full amount of his or her fee to the IDR program administrator. The invoice must detail the amount of time the neutral incurred in connection with the IDR proceeding, including but not limited to:

- detailing the time spent reviewing materials,
- participating in any conference calls,
- conducting the hearing,
- reaching a decision, and
- writing the opinion and the award.

The IDR program administrator must calculate the amount of its fee as agreed to in the [Retainer Agreement](#) and add it to the fee charged by the neutral (the "combined fee") and submit the invoice to both parties. Five days after issuing the invoice, the IDR program administrator is authorized to withdraw funds from the custodial account in the amount of the combined fee to pay itself and the neutral for the matter. In the rare instance that the combined fee exceeds the amount on deposit



plus any interest paid and remaining in the custodial account, the IDR program administrator will generate a bill for the shortfall to the claimant (the “shortfall”). The claimant is responsible for paying the IDR program administrator within 10 business days of receipt of the invoice the amount of the shortfall. The IDR program administrator will also determine whether any of the retainer fee remains after paying the combined fee (the “retainer surplus”).

**Release of Opinion.** After the IDR program administrator’s fees and the neutral’s fees have been paid, the IDR program administrator will promptly advise the neutral that it is authorized to release its award. The neutral will then release its opinion.

**Respondent Payment.** In the event that the claimant is the prevailing party, the respondent must promptly remit to the claimant the amount of the filing fee plus the combined fee less any retainer surplus.

## **Section 4.2. Payment of Subject Matter Experts**

Each party will pay its own costs and fees incurred in retaining any subject matter expert.

## **Section 4.3. Payment of Cost and Fee Award**

The non-prevailing party is responsible for the attorneys’ fees and costs incurred by the prevailing party to compensate it for the resources it expended in participating in the IDR proceeding (the “cost and fee award”). The lender and Fannie Mae recognize that disputes about such fees can arise, and that calculating appropriate costs can be difficult to determine, time consuming, and contentious. Accordingly, the cost and fee award shall be a fixed amount equal to 10% of the original principal balance of the mortgage loan in question at the time that Fannie Mae purchased it. The amount of the cost and fee award will be calculated accordingly and reflected in the [Retainer Agreement](#). If the parties jointly agree to expanded proceedings, the cost and fee award will be the amount agreed to by the parties as described in this section. The non-prevailing party will be responsible for paying the cost and fee award to the prevailing party within 30 days of the date the neutral issues its award. Each party will be responsible for its own attorney fees and costs incurred during the appeal, impasse, and management escalation processes. The prevailing party will be responsible for any attorneys’ fees and costs it incurred above the cost and fee award.

**Settlement.** After an IDR proceeding has been initiated, the dispute may be resolved by the parties at any stage of the IDR proceeding with or without the assistance of the neutral. If the dispute is resolved prior to submission of the first case file package, the cost and fee award will be waived, and as part of any such resolution, the parties will agree who has the obligation to pay any costs of the IDR program administrator and the neutral. To effectuate such payment, the IDR program administrator is authorized to produce an invoice reflecting the work completed up through the settlement date. The IDR program administrator’s fees will be calculated as a percentage of the neutral’s fee, as provided by the [Retainer Agreement](#). Once the parties have had the invoice of the combined fee for 10 days, the IDR program administrator will be authorized to pay itself and the neutral from the funds in the custodial account. Any excess funds in the custodial account will be promptly remitted to the claimant.

**Enforcement of Award.** If the neutral determines that a breach with respect to the subject mortgage loan existed at the time IDR commenced and Fannie Mae incurs any fees or costs in enforcing the related award of the neutral, the lender must reimburse such actual fees and costs to Fannie Mae within 45 days of receiving any request for reimbursement of such fees and costs from Fannie Mae. A lender’s failure to reimburse such fees and costs will constitute an independent breach of the contract between the parties.

**Miscellaneous.** All fees, costs, and delinquent or default interest due on a mortgage loan will continue to accrue throughout the appeal, impasse, management escalation, and the IDR processes, and will be payable to Fannie Mae within 30 days of receipt of the neutral’s award, if the neutral determines that a breach existed at the time IDR commenced.

## **Section 5.0 Confidentiality**

Fannie Mae, the lender, the IDR program administrator, the neutral, and any correspondent will maintain the confidentiality of the IDR proceedings and awards and will not disclose confidential information related to the proceedings except:

- to their conservators or regulators;
- to their attorneys or auditors;





- to any SME participating in the proceeding to the extent the SME has an obligation to maintain the confidentiality of the information;
- to any prospective purchaser of the mortgage loan or a risk portion of the mortgage loan;
- pursuant to a court order;
- as otherwise required by applicable regulations, statutes, or court rules, including without limitation any applicable disclosure requirements; or
- in order to enforce an award.

Before a correspondent may participate in IDR, an acceptable confidentiality agreement must be executed.

## **Section 6.0 Expanded Proceedings**

### **Section 6.1. General**

In the event either party determines that a group of mortgage loans at issue in the appeal process involve similar disputes that warrant a collective proceeding in the IDR process with respect to the demands issued in connection with the mortgage loans, that party may, only with the express written consent of the other party, file with its [Retainer Agreement](#) a request for “expanded proceedings.” Prior to submitting the [Retainer Agreement](#) to the IDR program administrator, the lender and Fannie Mae must agree on the fact that expanded proceedings are appropriate for the loans at issue and must also agree on an appropriate cost and fee award in connection with such expanded proceedings. If the lender and Fannie Mae cannot agree on an appropriate cost and fee award in connection with such expanded proceedings within 15 days, the parties will be deemed to have not agreed to expanded proceedings, and the lender will have 15 days to bring the individual mortgage loans to IDR.

Even if mortgage loans with similar disputes are identified, each mortgage loan must be brought into the IDR process within the deadline for IDR submission or that mortgage loan will not be eligible for the IDR process. The neutral will make an individual decision with respect to each mortgage loan that is part of the expanded proceedings.

### **Section 6.2. Process**

After the parties have agreed to expanded proceedings with respect to a group of mortgage loans, agreed upon an appropriate cost and fee award, and selected the neutral, the neutral will convene a conference call with the parties to create an order for scheduling the proceedings in the dispute. The conference call must be convened within 10 days of the neutral being selected. In such case, either party will have the right to request an in-person hearing at a location of the neutral’s choosing, but both parties must agree to the in-person hearing.

The hearing will include the presentation of witnesses subject to the other requirements of the IDR process. However, in no event can the scheduling order call for the written decision to be issued later than 180 days from the filing of the IDR demand. In the event expanded proceedings are agreed upon, the other requirements regarding the timing of events described in this document will be superseded by the order(s) entered by the neutral.

In any expanded proceeding, the neutral must review each mortgage loan individually and make a determination for each mortgage loan individually concerning whether the breach existed at the time the IDR proceeding commenced based on the factual record. If the neutral determines that any such breach(es) existed, the neutral will issue an award for each such mortgage loan directing the lender to comply with the terms of the applicable demand. The lender must comply within 30 days of the date the neutral issues the related award. The neutral is not required to make the same determination for all the mortgage loans in an expanded proceeding.



## **Section 7.0 Definitions**

All words and phrases defined in Fannie Mae's Single-Family *Selling Guide* and *Servicing Guide* have the same meanings for the purposes of this document. In addition to the words and phrases defined in the Guide and in this document, the following words and phrases are defined as follows when used in this document:

**"Appeal process"**: the first appeal process and the second appeal process described in the *Selling Guide* and the *Servicing Guide*.

**"Award"**: the final and binding ruling delivered by the neutral at the conclusion of the IDR proceeding.

**"Case file package"**: the package prepared by each of the parties concerning the demand in question in connection with the IDR proceeding. See Appendix A.

**"Claimant"**: the party initiating IDR.

**"Days"**: calendar days. When counting days in connection with the appeal through IDR processes, exclude the day that triggered the event. Deadlines falling on weekends or federal holidays are extended until the next business day.

**"Defect"**: an alleged significant defect or servicing defect for which Fannie Mae issued a demand to the lender.

**"Demand"**: a repurchase or other remedy request issued by Fannie Mae to a responsible party (as used in this document, "lender") to provide a specific remedy as provided in the Lender Contract. The issuance of a notice of servicing defect or request for payment of compensatory fees is not considered a "demand."

**"Guide"**: either or both the Fannie Mae Single-Family *Selling* or *Servicing Guide*.

**"IDR proceeding"**: the process described in the *Selling Guide*, the *Servicing Guide* and this document for resolving loan-level disputes involving a breach of the Lender Contract.

**"IDR program administrator"**: the provider(s) of conflict management services identified by Fannie Mae.

**"Impasse process"**: the impasse process described in the *Selling Guide* and the *Servicing Guide*.

**"Lender"**: a seller, servicer (the current servicer or prior servicer) or other party responsible for the selling representations and warranties or servicing duties or obligations that is responsible for the alleged defect identified in the demand.

**"Management escalation process"**: the management escalation process described in the *Selling Guide* and the *Servicing Guide*.

**"Neutral"**: the independent third party chosen by the IDR program administrator in accordance with the agreed upon selection process described in this document who will conduct the IDR proceeding.

**"Party"**: as the context indicates, either the lender or Fannie Mae. "Parties" mean the lender and Fannie Mae. "Parties" does not include the neutral, the IDR program administrator, or any correspondent.

**"Respondent"**: the party defending a case initiated through IDR.



## APPENDIX A: CASE FILE PACKAGE CONTENT

The case file package could include the following documentation, depending on the basis of the dispute:

- Legible mortgage payment record
- Fannie Mae Form 1008, Transmittal Summary
- Fannie Mae Form 1003, Loan Application
- Desktop Underwriter Batch Findings Reports, if applicable
- Single Loan Waiver Approval, if applicable
- Credit Reports and Credit References, with applicable explanations
- Fannie Mae Form 1005, Verification of Employment
- Tax Returns and/or other documentation used to verify income (W2s, P&Ls, paystubs, etc.)
- Fannie Mae Form 1006, Verification of Deposit and/or other documentation used to verify funds to close and reserves (bank statements, etc.)
- Miscellaneous credit documentation (gift letter, source of funds documentation, proof of sale of prior residence, proof of payoff of debts, tax returns to support rental income, etc.)
- Sales Contract and all addendums
- Fannie Mae Appraisal (Form 1004, 1073, 1025,219 or 2055 as appropriate) with all addendums and attachments
- Miscellaneous property documentation (well and septic certifications, maintenance agreements, final inspection, etc.)
- PUD or condo eligibility documentation, if applicable
- HUD-1 Settlement Statement or Closing Disclosure
- Home Buyer Education Certificate and Worksheet if Community Home Buyer Product
- Final Truth-in-Lending disclosures, including Itemization of Amount Financed or Loan Estimate
- Settlement/Closing/Escrow Instructions
- Discount Point Worksheet, if applicable
- Conventional Prepayment Penalty Worksheet, if applicable
- RESPA Affiliated Business Disclosure, if applicable
- Borrower's Choice of Attorney Form, if applicable
- Legible mortgage payment record
- Buy down schedule (Form 305D), if applicable
- Assumption documents, if applicable
- Current hazard insurance policy Current flood insurance policy and life of loan flood
- Certificate of occupancy, if applicable
- Note
- FHA/VA/MI Certificate, if applicable
- Recorded mortgage instrument with all applicable riders
- Un-recorded assignment in recordable form
- Any intervening assignments, recorded or unrecorded
- Complete mortgagee's title policy with all endorsements



- Survey, if applicable
- Fannie Mae Form 1068 or 1069 for cash; Form 2005 for MBS/MRS HUD-1 Settlement Statement
- Original commitment for title insurance, title opinion or abstract of title
- Collection history/notes

Additional agreements / contract could be required depending on the basis of the dispute:

- Master agreement
- MBS Pool Purchase Contract
- Any pilot agreements
- Indemnification agreement
- Repurchase agreement
- Resolution agreement
- Loss share or recourse agreement
- Acknowledgement agreement
- 629 form
- Consent to servicing transfer
- Servicing directives
- Any other agreements that may have been entered into between the responsible party and Fannie Mae