

Announcement SVC-2011-12**June 30, 2011**

Mortgage Insurance Coverage and Confirmation of Repurchase Policies and Remedies for Warranty Violations

Introduction

Fannie Mae will only purchase a mortgage loan for Fannie Mae's portfolio or an MBS security with a loan-to-value (LTV) ratio greater than 80% if the mortgage loan has mortgage insurance or another charter-compliant form of credit enhancement. Unless the lender has provided another charter-compliant form of credit enhancement, the lender must have obtained a primary mortgage insurance policy for a conventional first mortgage loan that has an LTV ratio greater than 80% by the time the loan is purchased for Fannie Mae's portfolio or securitized.

This Announcement reminds lenders of their contractual obligations and responsibilities for ensuring that any mortgage insurance coverage Fannie Mae requires is maintained. Mortgage insurance claims must be pursued in a way that will at all times protect Fannie Mae's interest in the mortgage loan.

The servicer must keep in effect any borrower-purchased conventional mortgage insurance that existed when Fannie Mae acquired the mortgage loan, unless the conditions Fannie Mae imposes for replacing or cancelling the coverage are met (as described in the *Servicing Guide*, Part II, Section 102: Conventional Mortgage Insurance). The servicer must keep lender-purchased mortgage insurance coverage for conventional mortgage loans in force until the mortgage loan is paid in full.

This Announcement provides new requirements for reporting notifications of mortgage insurance rescissions, mortgage insurer-initiated cancellations, and claim denials. It also confirms Fannie Mae's repurchase policies, required timelines and remedies relating to representation and warranty violations involving mortgage insurance coverage as well as representation and warranty violations involving all other Fannie Mae requirements.

This Announcement references "lender" and "servicer" depending on the responsibility of the entity. However, the particular designation should not be considered an exclusion with respect to an entity's responsibilities in connection with a particular mortgage loan. For example, depending on the structure of the transaction in question, the entity that has the responsibility for a selling or servicing representation and warranty may be:

- both seller and servicer,
- either seller or servicer, or
- it may have the responsibility as neither seller nor servicer.

Thus, the intention of this Announcement is not to allocate responsibility with respect to a particular mortgage loan.

Effective Date

The policy changes relating to the new reporting requirements included in this Announcement are effective for mortgage insurance notifications of rescissions, denials, and mortgage insurer-initiated cancellations dated on or after October 1, 2011.

Temporary Repurchase Accommodation

Fannie Mae's Mortgage Selling and Servicing Contract (MSSC) requires lenders to complete requested repurchases of ineligible loans within 30 days of receipt of Fannie Mae's repurchase demand. However, in recognition of current and unprecedented market conditions, Fannie Mae is extending the repurchase requirement to 90 days on a temporary basis. This temporary accommodation for completion of repurchase requests will also provide lenders with a timeline of 90 days in order to submit all documentation needed to substantiate a formal appeal to a Fannie Mae repurchase request. These temporary accommodations will remain in force through June 30, 2012, and are subject to review and adjustment at any time at the sole discretion of Fannie Mae. Loans that are four or more consecutive monthly payments delinquent may be repurchased from the MBS pool. If the loan remains in an MBS pool, this temporary accommodation will not apply.

Representations and Warranties

Servicing Guide, Part I, Section 201.01: Contractual Representations and Warranties

As a reminder, the lender represents and warrants that each loan it delivers is insurable and that no fraud or material misrepresentation has been committed (by any lender employee, any agent of the lender, or any third party including, without limitation, the borrower), by act or omission, in connection with the origination of the mortgage or servicing prior to the sale, regardless of the level or type of documentation, verification, or corroboration of information that may be required by the *Selling and Servicing Guides* or any contract with a particular lender. A mortgage is insurable if a mortgage insurer would not decline to insure it by reason of any fraud, misrepresentation, negligence, or dishonest, criminal, or knowingly wrongful act in origination or servicing, and would not be entitled to deny a claim by reason of any of the foregoing.

Definition of Mortgage Insurance Rescission, Mortgage Insurer-initiated Cancellation, and Claim Denial

Fannie Mae defines rescission of mortgage insurance coverage as notification by the mortgage insurer that it has made the determination to rescind coverage in connection with a specified mortgage loan due to a breach of one or more provisions of the applicable mortgage guaranty insurance policy.

Fannie Mae defines mortgage insurer-initiated cancellation as notification by the mortgage insurer that it has cancelled coverage in connection with a specified mortgage loan as of a

specified date due to a breach of one or more provisions of the applicable mortgage guaranty insurance policy.

Fannie Mae defines claim denial as notification by the mortgage insurer that a claim will not be paid in connection with a specified mortgage loan due to a breach of one or more provisions of the applicable mortgage guaranty insurance policy (for example, its obligation to produce documents).

In each of these scenarios, Fannie Mae acknowledges that the lender may seek to rebut the mortgage insurer's determination after having received the notification (whether of rescission or of mortgage insurer-initiated cancellation or of claim denial), but the triggering action for notification to Fannie Mae (as part of the lender's monthly activity reporting) is the initial notification from the mortgage insurer.

Notifying Fannie Mae of Mortgage Insurance Rescission, Mortgage Insurer-initiated Cancellation and Claim Denial

Active Loans

Servicers must report all mortgage insurance rescissions and mortgage insurer-initiated cancellations on active loans to Fannie Mae as part of their monthly activity reporting. Upon notification of a mortgage insurance rescission or mortgage insurer-initiated cancellation on an active loan, servicers must report to Fannie Mae using Action Code 54 (MI Terminated—High Risk Loan).

Rescissions and mortgage insurer-initiated cancellations must be reported to Fannie Mae in the Loan Activity Record (LAR) that relates to the month in which the notification from the mortgage insurer was received and the Action Date must be the date of the notification received from the mortgage insurer. If the servicer cannot report the Action Code through the LAR file, then it must do so through the Servicer's Reconciliation FacilityTM (SURFTM).

Liquidated Loans Including Pre-Foreclosure Sales and REO Loans

Servicers must report all mortgage insurance rescissions, mortgage insurer-initiated cancellations, and claim denials on all liquidated loans including pre-foreclosure sales and REO loans to Fannie Mae by sending an e-mail to mi_mail@fanniemae.com.

Rescissions, mortgage insurer-initiated cancellations, and claim denials must be reported to Fannie Mae no more than 30 days from the time a lender is notified of the mortgage insurance company's determination to effect a rescission, mortgage insurer-initiated cancellation, or claim denial. Notification must include the Fannie Mae and servicer loan numbers and a description of the rescission, mortgage insurer-initiated cancellation, or claim denial.

Inaccurate and Late Reporting

As a reminder, Fannie Mae reserves the right to impose a compensatory fee or exercise any of its other remedies with respect to a servicer that chronically submits late reports or that repeatedly neglects to verify the accuracy of its reports.

Repurchases Resulting From Warranty Violations

Servicing Guide, Part I, Section 207.01: Mortgage Loan Repurchases Requested by Fannie Mae

If Fannie Mae is notified, or otherwise determines, that a mortgage loan does not have the mortgage insurance coverage as required at delivery or if the mortgage insurance coverage is no longer in force on a mortgage loan due to a rescission, a claim denial, or a mortgage insurer-initiated cancellation (if the loan is no longer in an MBS pool), Fannie Mae may require the lender to immediately repurchase the mortgage loan or promptly remit a “make whole” payment covering Fannie Mae’s loss even if the lender is working with the mortgage insurer to continue or reinstate the coverage.

The lender must pay Fannie Mae the funds that are due in connection with a repurchase or make whole payment as required by the *Servicing Guide* (or with its next scheduled remittance) following receipt of the repurchase letter. If a lender is successful in its efforts to have the mortgage insurer continue or reinstate the coverage prior to completing a repurchase, the lender must contact Fannie Mae’s National Underwriting Center, through the Quality Assurance System or its Centralized Repurchase Team contact, to provide proof that the mortgage insurance has been continued or reinstated by the mortgage insurer.

If Fannie Mae is notified, or otherwise determines, that the mortgage insurance coverage is no longer in force on a mortgage loan, Fannie Mae will require that the lender:

- secure a comparable replacement mortgage insurance policy at the lender’s expense;
- enter into an agreement with Fannie Mae to repurchase the mortgage loan if it later becomes more than 120 days delinquent if the lender meets the requirements for such an agreement as provided in A2-3.2-01, Loan Repurchases Requested by Fannie Mae, of the *Selling Guide*; or
- if the loan at the time has been continuously delinquent for four consecutive monthly payments, remove the loan from the MBS pool and repurchase the mortgage loan.

If a lender is successful in its efforts to have the original mortgage insurer continue or reinstate the coverage, the lender must contact Fannie Mae’s National Underwriting Center, through the Quality Assurance System or its Centralized Repurchase Team contact, to provide proof that the mortgage insurance has been continued or reinstated by the mortgage insurer.

Pending Mortgage Insurance Rescissions, Mortgage Insurer-initiated Cancellations, and Claim Denials

All outstanding repurchase requests relating to mortgage insurance rescissions, mortgage insurer-initiated cancellations, and claim denials received by lenders prior to April 30, 2011 must be satisfactorily resolved by the lender no later than September 30, 2011, by:

- obtaining and providing proof of continuation or reinstatement of coverage from the mortgage insurer;
- repurchasing the mortgage loans if mortgage insurance was rescinded or a claim was denied, or the loan at the time has been continuously delinquent for four consecutive monthly payments and mortgage insurance was cancelled by the mortgage insurer;

- remitting “make whole” funds on mortgage loans where coverage is rescinded, cancelled by the mortgage insurer, or a claim denied; or
- reaching another satisfactory resolution with the prior written approval of Fannie Mae.

Repurchase requests relating to mortgage insurance rescissions, mortgage insurer-initiated cancellations, and claim denials received on or after April 30, 2011 will be subject to the repurchase timelines identified in this Announcement.

Remediation of Violations Requiring Repurchase

When Fannie Mae requests repurchase, indemnification, or a make-whole payment because the mortgage loan has been found to be deficient in meeting the lender's contractual obligations, including without limitation its selling or servicing representations or warranties, on a temporary basis until June 30, 2012, the lender may submit a written appeal of Fannie Mae's repurchase request within 90 days from the date of Fannie Mae's letter requiring repurchase. Following June 30, 2012, the timeline for submitting appeals shall be 30 days or within such other time frame specified by Fannie Mae.

In addition to describing the facts that demonstrate that the mortgage loan complies with Fannie Mae's requirements, the lender must submit to Fannie Mae all supporting documentation related to the appeal at one time in one consolidated package. Written notification of a lender's intention to submit a complete appeal package at some future date does not satisfy the appeal requirement.

If no written appeal is received within the 90-day period or within such other time frame as specified in writing by Fannie Mae, it will be assumed that the lender does not contest the repurchase and the repurchase funds are due Fannie Mae. Thereafter, the appeal process will be unavailable to the lender for that particular repurchase request.

An appeal based on the assertion that the mortgage insurance coverage has been reinstated must include, at a minimum, a letter or e-mail from the mortgage insurer stating that coverage has been reinstated in connection with a specified mortgage loan. Upon receipt of required documentation confirming reinstatement or continuation of coverage, Fannie Mae will withdraw its repurchase request provided there are no additional deficiencies that remain unresolved.

If a lender submits a timely written appeal and Fannie Mae denies the appeal, the lender must complete the repurchase of the mortgage or submit the “make whole” payment within 15 days from the date of Fannie Mae's denial letter or within such other time frame as specified by Fannie Mae in writing. No other appeals shall be permitted without additional material information. Fannie Mae's decision on an appeal is conclusive. Fannie Mae is not obligated to consider any independent third-party repurchase review of the appeal.

Redelivery of Loans

Announcement SVC-2010-17: *Miscellaneous Servicing Policy Changes and Servicing Guide, Part I, Section 207.01: Mortgage Loan Repurchases Requested by Fannie Mae*

Fannie Mae may allow the redelivery of a mortgage loan that was repurchased by a lender, as long as the condition making the loan ineligible has been corrected and the loan meets Fannie

Mae's current underwriting standards. This includes mortgage loans repurchased due to mortgage insurance rescissions, claim denials, or mortgage insurer-initiated cancellation of coverage. The terms for redelivery of loans previously repurchased from Fannie Mae will be considered on a case by case basis at Fannie Mae's sole discretion.

Fannie Mae will not accept redelivery of any mortgage loan that was required to be repurchased by a secondary market investor, government-sponsored enterprise (GSE), or private institutional investor other than Fannie Mae. Such loans are not eligible for delivery to Fannie Mae even if the identified defect has been cured by the lender and the loan may otherwise meet Fannie Mae requirements. A mortgage loan that a lender repurchased from another investor or GSE that was delivered in error to that investor or GSE is eligible for delivery to Fannie Mae as long as it meets all current requirements of the *Selling Guide*.

In the event a loan is deemed ineligible for redelivery to Fannie Mae or rejected by Fannie Mae upon redelivery, any future losses incurred after repurchase are the responsibility of the lender and not Fannie Mae.

Remedies for Breach of Contract

Servicing Guide, Part I, Section 201.09: Remedies for Breach of Contract and Nonperformance

Failure to repurchase a loan or to remit the make whole payment as required by the MSSC or the *Servicing Guide* may result in the imposition of certain sanctions including, but not limited to:

- requiring the posting of collateral,
- denying transfer of servicing requests or denying pledged servicing requests,
- imposing limits on trading desk transactions,
- imposing compensatory fees,
- modifying or suspending any contract or agreement with a lender, or
- suspending or terminating a lender or imposing some other formal sanction on a lender.

Fannie Mae reserves all its rights and remedies available to it under the MSSC.

Maintaining Lender Eligibility

Servicing Guide, Part I, Section 302.06: Repurchase Limitation

As a reminder, and in addition to all other repurchase requirements, the total unpaid principal balance of all outstanding Fannie Mae repurchase requests cannot exceed 25% of Lender Adjusted Net Worth as of the latest quarter end. If a breach of this requirement occurs, the lender will have 30 days to reduce the outstanding repurchase requests to a level that complies with Fannie Mae's requirements.

Servicers should contact their Servicing Consultant, Portfolio Manager, Investor Reporting Business Analyst, or Fannie Mae's National Servicing Organization's Servicer Solution Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans
Vice President
Chief Risk Officer for Credit Portfolio Management