

Servicing Guide Announcement SVC-2012-21

October 3, 2012

Servicing Guide Updates to Conform to the FHFA Directive on Harmonized Contracts

The requirements contained in this Announcement are consistent with the Federal Housing Finance Agency's (FHFA) directive to Fannie Mae and Freddie Mac to align the selling and servicing contracts. This Announcement supplements the requirements currently contained in the Lender Contract and is not intended to replace or limit any existing requirements except where specifically stated. The goal in establishing and clarifying these standards is to ensure that sellers and servicers who do business with Fannie Mae can fully understand the financial and operational responsibilities of being a Fannie Mae approved seller and/or servicer. Some of these standards are new, while others are clarifications of existing rights that are currently available to Fannie Mae.

With this Announcement Fannie Mae is introducing additions and revisions to existing policies and practices including requirements dealing with:

- Performance Metrics for Performing and Non-Performing Loans
- Servicer Violations and Remedies
- Compensatory Fees
- Events of Default
- Servicing Terminations and Transfer of Servicing Remedies
- Response Time Frames and Appeal Process for Remedies
- Miscellaneous Contractual Changes

Except for the revisions outlined in this Announcement, Fannie Mae is not modifying the Fannie Mae *Servicing Guide*. Unless stated otherwise, the effective date of the provisions in this Announcement will be January 1, 2013.

Performance Metrics for Performing and Non-Performing Loans

Part I, Section 202: Servicer's Basic Duties and Responsibilities is revised to add the following language at the end of the last paragraph:

In order to determine the servicer's compliance with its servicing duties under the Lender Contract, Fannie Mae measures the servicer's performance utilizing various performance metrics, which may include servicer reviews and the Servicer Total Achievement & Rewards (STAR) Program for those servicers which Fannie Mae has identified for inclusion in the Program. Servicers selected to participate in STAR will receive written notification from Fannie Mae prior to being added into the program. STAR encompasses Operational Assessments and Scorecards.

STAR is one of Fannie Mae's performance management frameworks designed to determine a servicer's overall performance based on Operational Assessments and Scorecards. The [STAR Reference Guide](#) is the program's primary information resource. The *STAR Reference Guide* is located on Fannie Mae's website on

the STAR program page and is incorporated herein by reference. Fannie Mae may change the *STAR Reference Guide* from time to time.

Operational Assessments and servicer reviews measure a servicer's performance based on key criteria in certain servicer performance categories, which may include, without limitation: customer service; escrow administration; hazard, flood and mortgage insurance; collections; loss mitigation; investor relations/reporting; mortgage payment processing, remitting, accounting and reporting; bankruptcy, foreclosure and REO management; data integrity; delinquency and annual financial and management reporting; and document custody and record retention. Fannie Mae reserves the right to amend the performance criteria, modify how the results are determined and revise the content of the performance metrics from time to time.

Fannie Mae may also communicate individual performance targets which may not be included in the STAR Program Operational Assessments and Scorecards. Fannie Mae will regularly monitor each servicer's performance.

Fannie Mae considers factors such as trends in performance, adequacy of staffing, compliance reviews and audits, STAR results, loan file reviews, timeliness of its payment obligations and overall compliance with the requirements of the Lender Contract in evaluating whether the servicer's overall performance is unacceptable for purposes of Part I, Section 201.09, Breach of Contract of the *Servicing Guide*. A servicer will be presumed to have unacceptable STAR results if the servicer's STAR ranking is in the bottom 25% of ranked servicers. Servicers with unacceptable performance, including those who are presumed to have unacceptable performance because their STAR ranking is in the bottom 25% of ranked servicers, may be required, in Fannie Mae's sole discretion, to enter into a performance improvement plan. The performance improvement plan may be an alternative to the immediate termination of the Lender Contract. Fannie Mae reserves the right to terminate a servicer's Lender Contract in whole or in part, including its selling and/or servicing arrangement at any time with or without cause, in accordance with the Lender Contract.

Servicer reviews, Scorecards, and Operational Assessments are considered to be "confidential information" for purposes of the *Servicing Guide*.

Performance Improvement Plans

Fannie Mae expects all servicers to service all mortgage loans in full compliance with the Lender Contract. A servicer's performance may be measured by Fannie Mae through any number of servicing quality and compliance reviews, including the STAR program, servicer reviews, as well as, timely payment of its obligations, compliance with the *Servicing Guide*, and other key performance metrics.

Servicers with unacceptable performance, including those that are presumed to have unacceptable performance because their STAR ranking is in the bottom 25% of ranked servicers, may be subject to a performance improvement plan issued by Fannie Mae.

Performance improvement plans may require the servicer to take actions and/or meet targets within defined time frames in order to remedy servicing deficiencies which may include one or more of the following areas: customer service; escrow administration; hazard, flood and mortgage insurance; collections; loss mitigation; investor relations/reporting; mortgage payment processing, remitting, accounting and reporting; bankruptcy, foreclosure and REO management; data integrity; delinquency and annual financial and management reporting; and document custody and record retention.

The failure of the servicer to meet the terms of its performance improvement plan, including any timeline requirements for the performance improvement, will constitute a breach of the Lender Contract and may result in Fannie Mae terminating the servicer's selling and/or servicing approvals in whole or in part or taking other appropriate actions under its Lender Contract.

Servicer Violations and Remedies

Consistent with its customary practices and as set forth in the *Servicing Guide*, Fannie Mae, may, in addition to any other remedy available at law or in equity, require a party responsible for a breach to pay a compensatory fee, repurchase Fannie Mae's interest in a mortgage loan, remit a make whole payment, as hereafter defined, or indemnify or otherwise hold Fannie Mae harmless for any loss or damages as provided in Part 1, Section 201.05, Indemnification for Losses of the *Servicing Guide*. If Fannie Mae, in its sole discretion, determines that a breach of a servicer's obligations may be cured, Fannie Mae may provide the servicer an opportunity to cure such breach within a specified time frame. *Servicing Guide*, Part I, Section 201.10.02, Alternatives to Contract Termination, is clarified accordingly and the 90 day cure period for title defects that was included in *Servicing Guide*, Part VIII, Section 107.02 has been revised as outlined below. Fannie Mae will strive to apply the most appropriate remedy that is commensurate with the associated level of risk to compensate Fannie Mae for the harm caused by the violation.

Fannie Mae is adding and removing several definitions to its Glossary in connection with this Announcement. Fannie Mae is adding a definition of "responsible party" and "make whole payment" to the Glossary and removing the definition of "make whole amount":

- "make whole payment" is defined as: the amount that a party responsible for a breach of a selling representation or warranty or a servicing breach must pay Fannie Mae so that Fannie Mae does not incur a loss on the mortgage or the property."
- "responsible party" means a seller, servicer or other entity that is responsible for the selling representations and warranties and/or for the servicing responsibilities or liabilities on a mortgage loan.

Notice of Title Defect

***Servicing Guide*, Part VIII, Section 107.02: Title Defects**

Servicers are reminded that with respect to each first-lien mortgage loan sold to Fannie Mae, the following warranties, among others, are made to Fannie Mae:

- that the mortgage is a valid and subsisting lien on the property;
- that the property is free and clear of all encumbrances and liens having priority over it except for liens for real estate taxes, and liens for special assessments, that are not yet due and payable; and
- that the mortgage and any security agreements, chattel mortgages, or equivalent documents relating to it have been properly signed, are valid, and their terms may be enforced by Fannie Mae, its successors, and assigns.

Additionally, the servicer has servicing obligations in the *Servicing Guide* the breach of which may result in a title defect.

If a servicer is notified or otherwise becomes aware that there is a title defect with a loan, the servicer must promptly notify Fannie Mae by emailing servicing_violation@fanniemae.com notification of the existence of the title defect, a description of the title defect, the servicer's intended actions to resolve the title defect, and the date which the servicer became aware of the title defect (the "Title Information"). The notification to Fannie Mae should also include a completed form *Notification of Title Defect* located on Fannie Mae's website. The servicer should take prudent steps to cure such defect, even if the servicer is not responsible for the selling representations and warranties for the loan or if the servicing defect was created by a prior servicer. It is the responsibility of the servicer (and not Fannie Mae) to promptly provide the Title Information to the responsible party if the servicer is not the responsible party. If the title defect can be cured as part of the foreclosure process, it is the servicer's responsibility to effectuate such cure.

Fannie Mae reserves the right to require the servicer to repurchase a loan if the title defect was the result of a servicer error and is not resolved to Fannie Mae's satisfaction within 90 days of the servicer's receipt of notice of the servicing title defect from Fannie Mae (or otherwise). Fannie Mae reserves the right, at its option, to pursue other remedies, including issuing an indemnification claim to compensate it for any loss or damage it suffered due to the title defect.

Delays by title insurance companies in processing and resolving claims, or disputes with title insurance companies over coverage issues will not excuse the servicer or the responsible party from its repurchase obligations or prevent Fannie Mae from enforcing its remedies. Fannie Mae is under no obligation to extend the cure period for the title defects beyond 90 days.

Bifurcated Mortgages

If the selling representations and warranties or prior servicer obligations were not assumed by the servicer and either an origination or servicing title defect exists, as applicable, once the servicer is notified or otherwise becomes aware of the title defect the servicer must promptly notify Fannie Mae. The servicer must cooperate with the responsible party and take reasonable steps to cure an origination title defect. The servicer need not take actions or advance any funds that would not be approved by Fannie Mae unless the responsible party separately agrees to reimburse the servicer for such amounts in attempting to cure the title defect on the bifurcated mortgage in the manner suggested by the responsible party. The servicer should contact Fannie Mae at responsible_party_request@fanniemae.com if it needs confirmation of the responsible party. Fannie Mae reserves the right, at its option, to pursue other remedies as set forth in the *Selling* or *Servicing Guides*.

Fannie Mae reserves the right to require the responsible party to repurchase a loan if the origination or prior servicer created servicing title defects that are not resolved to Fannie Mae's satisfaction within 90 days of the responsible party's receipt of notice of the title defect from Fannie Mae or otherwise.

Compensatory Fees

Fannie Mae is updating the imposition of compensatory fees resulting in additions of new compensatory fees and deletion or revisions of some existing compensatory fees. The changes are outlined below:

Fannie Mae is deleting the following compensatory fees:

- Fannie Mae will no longer assess a compensatory fee if a servicer fails to file a timely and accurate IRS Form 1099-A. Instead, Fannie Mae preserves the right of indemnification from the servicer for any fees imposed by the IRS on Fannie Mae. *Servicing Guide*, Part 1, 201.11.12: Failure to File or Correct IRS Form 1099-A
- Fannie Mae will no longer impose a compensatory fee if a servicer refers a file to a non-Fannie Mae retained attorney for default related services. Until Fannie Mae issues an announcement implementing a new structure for default legal services, however, servicers must continue to refer matters to retained attorneys in jurisdictions in which Fannie Mae has retained attorneys. *Servicing Guide*, Part VIII, Section 106.01: Fannie Mae-Retained Attorneys
- Due to the retirement of Fannie Mae's Mandatory Pre-Filing Mediation Policy for Mortgage Loans in Florida described in Announcement SVC-2012-14, Fannie Mae is deleting the imposition of a compensatory fee when a servicer fails to attend a pre-filing mediation session. *Servicing Guide*, Part VII, Section 611: Mandatory Pre-Filing Mediation Policy for Mortgage Loans in Florida

Late or Inaccurate Loan Reporting

***Servicing Guide*, Part I, Section 201.11.09: Late Submission of Fannie Mae Investor Reporting System Reports and Part IV, Section 106: Reporting Conversions for Portfolio Mortgage Loans**

Fannie Mae is revising the maximum compensatory fee assessment for each instance of late or inaccurate loan reporting. A servicer that fails to submit its Fannie Mae investor reporting system reports by the required deadlines or fails to use the correct data and formats may be subject to the following compensatory fees for Fannie Mae's internal administrative costs:

- Greater of \$250 or \$50 per mortgage loan, up to a maximum of \$5,000, for the first instance of late or inaccurate reporting;
- Greater of \$500 or \$50 per mortgage loan, up to a maximum of \$10,000, for the second instance of late or inaccurate reporting (if it occurs within one year of the first instance); and
- Greater of \$1000 or \$50 per mortgage loan, up to a maximum of \$15,000, for each subsequent instance of late or inaccurate reporting (if any subsequent instance occurs within one year of the most recent previous instance).

Fannie Mae reserves the right to hold the servicer liable for actual damages incurred beyond Fannie Mae's internal administrative costs.

Instances of late reporting include, but are not limited to:

- Untimely Reporting of ARM Conversions - The servicer must provide information about the conversion when it submits its monthly Fannie Mae investor reporting system reports (hereinafter referred to as "Investor Reporting reports") to Fannie Mae.
- Failure to Comply with Reporting Deadlines – The servicer must comply with the reporting time frames outlined in the *Servicing Guide*, Part X, Section 103.01, Removal Transactions; Part X, Section 103.02, Servicing Transfer Transactions; and Part X, Section 103.03, All Other Transactions.
- Delayed Remittance of Collections – The servicer must comply with the reporting time frames outlined in the *Servicing Guide*, Part IX, Section 201.01, Actual/Actual Remittance Types; Part IX, Section 201.02, Scheduled/Actual Remittance Types; and Part IX, Section 201.03, Scheduled/Scheduled Remittance Types.

Incorrect MBS Security Reporting

***Servicing Guide*, Part I, Section 201.11.10: Late or Inaccurate Reporting of MBS Security Balances**

Fannie Mae is revising the maximum compensatory fee assessment for each instance of late or incorrect MBS security reporting. Servicers that fail to submit timely or accurate MBS security reporting will be subject to the following compensatory fees for Fannie Mae's internal administrative costs:

- Greater of \$250 or \$50 per MBS pool, up to a maximum of \$10,000, for the first instance of late or inaccurate reporting of its MBS security balances;
- Greater of \$500 or \$100 per MBS pool, up to a maximum of \$50,000, for the second instance of late or inaccurate reporting of its MBS security balances (if it occurs within one year of the first instance); and
- Greater of \$1000 or \$100 per MBS pool, no maximum, for each subsequent instance of late or inaccurate reporting of its MBS security balances (if any subsequent instance occurs within one year of the most recent previous instance).

Fannie Mae reserves the right to hold the servicer liable for actual damages incurred beyond Fannie Mae's internal administrative costs.

Instances of late or inaccurate reporting of MBS security balances include, but are not limited to:

- Security balances transmitted after 5 PM (Eastern Time) on the second business day of the month.

- Unauthorized Multiple Transfers of MBS Pool Remittances - When a servicer wire transfers its MBS pool remittances, it must send only one wire transfer each month, regardless of the number of MBS pools it is servicing as outlined in *Servicing Guide*, Part I, Section 201.11.11: Multiple Wire Transfers of MBS Pool Remittances.

Liquidation Processing Delays

***Servicing Guide*, Part I, Section 201.11.07: Delays in Liquidation Process**

For delays to the liquidation process resulting from any of the circumstances outlined below, the compensatory fees will be determined under the Delays in Liquidation Process. Fannie Mae is eliminating separate compensatory fees in these circumstances:

- Delays due to Unauthorized File Transfers Between Attorneys – Servicers must obtain Fannie Mae’s prior written approval for the transfer of any files from one law firm (or trustee) to another. The servicer may be subject to a compensatory fee for delays caused by unauthorized file transfers. *Servicing Guide*, Part VII, Section 501: Selection of Bankruptcy Attorneys and Avoiding Delays in Case Processing and Part VIII, Section 106, Referral to Foreclosure Attorney/Trustee
- Delays in Bankruptcy Process – Servicers are responsible for delays attributable to the servicer in all cases and for delays attributable to the bankruptcy attorney in all cases handled by servicer-retained attorneys. *Servicing Guide*, Part VII, Section 502.12, Delays in the Bankruptcy Process
- Termination of Automatic Stay or Bankruptcy Dismissal – When the automatic stay is terminated or the case is dismissed or the borrower has received a discharge coupled with a Trustee Abandonment of the property, the servicer must immediately send any required breach letter to the borrower (if it was not sent previously) and refer the mortgage loan to an attorney (or trustee) to initiate (or resume) foreclosure proceedings, still keeping in mind the possibility of arranging some foreclosure prevention alternative. *Servicing Guide*, Part VII, Section 503.02, Delinquent Mortgage Loan

Foreclosure Rescission and Eliminations

***Servicing Guide*, Part VIII, Section 107: Conduct of Foreclosure Proceedings**

Fannie Mae is introducing a new compensatory fee to be imposed if a servicer must rescind a foreclosure sale due to the servicer’s failure to follow Fannie Mae guidelines or other servicer error or alleged error. The following sentences are added as a new last paragraph to Part VIII, Section 107, Conduct of Foreclosure Proceedings: Fannie Mae may assess the servicer \$1,000 for internal administrative costs plus any third party costs. Fannie Mae will not reimburse foreclosure fees and costs that are required to complete a new foreclosure following rescission.

Delayed Remittance of FHA Claim Settlement

***Servicing Guide*, Part VIII, Section 204: Filing Claims for FHA Coinsured Mortgage Loans**

As soon as the servicer receives the HUD claim settlement from a claim filed after sale of an FHA coinsured mortgage loan, it must remit the full amount it owes Fannie Mae. If the payment is not sent to Fannie Mae within 15 days after it is received, Fannie Mae may impose a daily interest charge until it does receive it. This interest charge will be calculated at the prime rate (as published in *The Wall Street Journal's* prime rate index) that was in effect on the first business day of the month in which HUD transferred the funds to the servicer, plus 3%.

Events of Default

Servicing Guide, Part I, Section 201.09: Breach of Contract

Fannie Mae seeks to create consistency in its contracts related to termination due to inadequate servicing performance or operational performance related issues and has identified certain policies that need clarification or revision. In furtherance of that objective Fannie Mae is revising the Guide to read as follows:

The following events constitute a breach of the servicer's contractual obligations:

- Unacceptable performance as determined by Fannie Mae with regard to the servicer's compliance with the Lender Contract, including, but not limited, to Servicer Performance Measurements as described in *Servicing Guide, Part I, Chapter 2*, the STAR results and the requirements of any written performance improvement plan;
- The servicer has a 30-, 60- or 90-day delinquency rate or a real estate owned (REO) rate more than 50% higher than the average 30-, 60- or 90-day delinquency rate or REO rate for any or all mortgage loans owned or guaranteed by Fannie Mae nationally or in the same geographic area (which may include Standard Metropolitan Statistical Area, county, or state) in which the mortgaged premises that secure the mortgage loans either sold by the seller or serviced by the servicer are located and with similar mortgage and borrower characteristics (for example, origination year, loan to value ratio, documentation type, etc.);
- The placement of the servicer on probation or restriction of its activities in any manner by a federal or State government agency that would materially and adversely affect the servicer's ability to comply with the terms or conditions of the Lender Contract; and
- Any judgment, order, finding or regulatory action to which the servicer is subject that would materially and adversely affect the servicer's ability to comply with the terms or conditions of the Lender Contract.

Servicing Terminations and Transfer of Servicing Remedies

The changes in this Section are intended to create consistency related to termination due to inadequate servicing performance or operational performance related issues and compensation requirements and timelines to enforce a without cause termination. As guarantor, Fannie Mae must be able to direct servicing to entities best suited to perform servicing functions to the extent servicers are not able to meet their contractual obligations. When Fannie Mae terminates a seller's or servicer's Lender Contract, the servicer must comply with instructions provided by Fannie Mae regarding requirements reasonably necessary to effectuate the transfer of servicing in connection with a termination.

The servicer shall be responsible for all reasonable and customary costs and expenses related to the transfer of servicing in connection with a termination hereunder

Servicer Termination

Servicing Guide, Part I, Section 201.08.01: Servicer's Termination

The *Servicing Guide* will be revised to provide that when a servicer elects to terminate its contractual rights to the servicing of Mortgage loans or participation interest in mortgage loans the servicer shall be responsible for all reasonable and customary costs and expenses related to the transfer of servicing in connection with a termination hereunder.

Termination Without Cause

Servicing Guide, Part I, Section 201.08.02: Fannie Mae's Termination

The following procedures apply to the termination of a servicer's servicing of any or all mortgage loans by Fannie Mae when it is done without cause, and not in connection with a sale of Fannie Mae's interest in the affected mortgage loans:

- The servicer may attempt to arrange for a sale of the servicing of the mortgage loans to another Fannie Mae–approved servicer within the 90-day period following Fannie Mae's termination notice. The servicing must be sold to another Fannie Mae-approved lender in good standing that, in Fannie Mae's judgment, will properly service the mortgages to be transferred. Before the end of the 90 days, the servicer must notify Fannie Mae of any proposed sale, providing related information for Fannie Mae's consideration. Fannie Mae must approve the transfer before the sale can be completed. Fannie Mae's approval will not be unreasonably withheld.
- If Fannie Mae approves the transfer, it must be completed within 60 days after the date of approval, and will be subject to the following conditions:
 - The servicer will be entitled to all the proceeds of the sale of servicing, but it must pay all costs and expenses related to the sale or the transfer. Fannie Mae will not pay a termination fee.
 - The purchaser will have to assume warranties that were made to Fannie Mae when Fannie Mae purchased or securitized the mortgage loans being transferred, and must assume all of the transferor servicer's contractual obligations covering the servicing of the transferred mortgage loans, including (but not limited to) any outstanding claims. Similarly, once the transfer becomes effective, the purchaser will be granted the same contractual rights and servicing compensation that the transferor servicer had received. The transferee servicer's assumption of these warranties and obligations does not, in any way, release the transferor servicer from its obligations related to selling warranties and servicer indemnifications.
- If, at the end of the 90-day period following Fannie Mae's termination notice, the servicer has not arranged to sell its servicing and given Fannie Mae the required notice, or if Fannie Mae does not approve the proposed transfer, Fannie Mae may terminate the servicer's Lender Contract on the 15th day following the end of the 90-day period. Fannie Mae may then transfer the servicing to a servicer of its choice. If Fannie Mae decides to do so, it may publicly announce that it is soliciting bids for the purchase of the servicing functions from Fannie Mae–approved servicers that are in good standing. Within ten days after any public announcement, Fannie Mae may negotiate and effect the sale of the servicing functions to the highest satisfactory bidder. Regardless of whether Fannie Mae publicly solicits bids, it must pay the transferor servicer a termination fee (reduced by reasonable and customary costs and expenses related to the transfer of servicing).
- For mortgage loans delivered prior to January 1, 2013, the termination fee will be an amount equal to two times the servicer's annualized servicing compensation—base servicing fee plus any excess yield—for the mortgage loan as of the termination date. For example, assume that a mortgage loan has a UPB of \$100,000, a 0.375% servicing fee, and 0.125% in excess yield. Servicing compensation for the mortgage loan would be 0.5% (0.375% + 0.125%). To determine the termination fee, multiply the UPB by the servicing compensation percentage to develop the annualized servicing fee ($\$100,000 \times 0.005 = \500), then multiply the result by two ($\$500 \times 2 = \$1,000.00$).
- For mortgage loans delivered on or after January 1, 2013, the termination fee will be based on conditions existing as of the transfer date and will be an amount equal to the lesser of the following:

- Two times the Net Servicing Rate multiplied by the unpaid principal balance as of the date of transfer of those mortgage loans subject to termination that are not delinquent. For purposes of this calculation, a loan will be deemed to be delinquent if as of a month end transfer date any payment is outstanding. In the event of a servicing transfer date that takes place other than at month end, a loan will be deemed to be delinquent if there is any payment outstanding as of the month end immediately preceding the transfer date. No termination fee will be paid for a delinquent loan; or
- The market value of the contractual right to service the mortgage loans as established by a qualified market leader in servicing valuations using costs reflective of Fannie Mae's cost to engage a subservicer, applying protocols appropriate for the risk of the portfolio as determined by Fannie Mae in its sole discretion.
- For purposes of calculating the termination fee, the "Net Servicing Rate" means the note rate of the mortgage loan less all of the following: a) the pass-through rate due Fannie Mae, b) any guaranty fee due Fannie Mae, c) any excess servicing not retained by the servicer, d) any lender paid mortgage insurance, and e) any other component of the note rate that the servicer is not entitled to retain for servicing the loan, expressed as an annualized fractional percentage.

Termination Without Cause – Sale of Loan or Interest

When Fannie Mae terminates a servicer's servicing arrangement without cause and in connection with a sale of Fannie Mae's interest in the affected mortgages loans, the servicer will have no further rights in the servicing of the mortgage loans it had been servicing for Fannie Mae. For mortgage loans delivered prior to January 1, 2013, the termination fee in such a situation will be an amount equal to two times the servicer's annualized servicing compensation—base servicing fee plus any excess yield—for the mortgage loan as of the termination date. For example, assume that a mortgage loan has a UPB of \$100,000, a 0.375% servicing fee, and 0.125% in excess yield. Servicing compensation for the mortgage loan would be 0.5% (0.375% + 0.125%). To determine the termination fee, multiply the UPB by the servicing compensation percentage to develop the annualized servicing fee ($\$100,000 \times 0.005 = \500), then multiply the result by two ($\$500 \times 2 = \$1,000.00$).

For mortgage loans delivered on or after January 1, 2013 for which Fannie Mae terminates a servicer's servicing arrangement without cause and in connection with a sale of Fannie Mae's interest in the affected mortgages loans, Fannie Mae will apply the same termination fee calculation utilized for terminations without cause referenced above applicable to mortgage loans delivered on or after January 1, 2013. However, if the servicing responsibilities for a mortgage loan are retained by servicer in connection with the sale of Fannie Mae's interest, no termination fee shall be paid.

Termination and Transfer Due To Delinquency Status

For mortgage loans delivered on or after January 1, 2013 Fannie Mae shall have the right to terminate and transfer a servicer's servicing rights in a mortgage loan, in the event the mortgage loan has two (2) or more payments outstanding as of the "Determination Date," which shall be defined as a day of a month designated by Fannie Mae, taking into account necessary compliance with all applicable laws and regulations, including, without limitation, the federal Real Estate Settlement Procedures Act and Regulation Act (RESPA) and Regulation X, as amended. For example, a mortgage loan for which a monthly payment is due and owing for August 1 shall have two (2) payments outstanding as of September 2.

In the event Fannie Mae intends to exercise its right to terminate and transfer a servicer's servicing rights due to the delinquency status on mortgage loans delivered on or after January 1, 2013, Fannie Mae will give the servicer notice at least ninety (90) days prior to the first applicable termination date. If Fannie Mae has given the servicer such ninety (90) days notice, Fannie Mae may thereafter suspend its exercise of such termination and transfer rights at any time; provided, however, that upon the written request of the servicer Fannie Mae will

provide up to one-hundred eighty (180) days notice prior to suspending the exercise of such termination and transfer rights.

All terminations and transfers effectuated pursuant to delinquency status shall be effective as of the last day of the transfer month. Fannie Mae will not pay a termination fee in connection with a termination of a servicer's servicing rights due to delinquency status. The mortgage loan servicing will transfer to and remain with the new servicer, even if the mortgage loan becomes current after the Determination Date.

Response Timeframes and Appeal Process for Repurchases and Other Remedies

Servicing Quality Control Reviews

Fannie Mae will continue to review any servicing files requested with the primary focus of confirming that the mortgage loan has been serviced in accordance with the Lender Contract. If Fannie Mae has evidence of a servicing violation the appropriate remedy will be pursued. Fannie Mae is committing to ensuring that lenders continue to have the opportunity to resolve loan repurchase requests or alternative remedies through an appeals process.

Request

If Fannie Mae determines that a mortgage loan failed to meet underwriting requirements or is otherwise ineligible, or if servicing deficiencies are identified Fannie Mae may issue a repurchase request or pursue another remedy with the entity that is responsible for the selling representations or warranties or for the servicing responsibilities or liabilities (the “**seller/servicer**” or the “**responsible party**.”)

Timing

Sellers/Servicers

Sellers/servicers must meet the following timeframes after January 1, 2013:

- A seller/servicer must submit the requested documentation for an underwriting or servicing review so that Fannie Mae receives the file within 30 days after Fannie Mae notifies the seller/servicer that it has selected a mortgage loan for review. Fannie Mae, in its sole discretion, may request the documentation in a shorter or longer period of time based upon circumstances at the time.
- The seller/servicer must pay Fannie Mae the funds that are due in connection with a request for repurchase, indemnification or make whole payment within 60 days after receipt of the request or within such other time frame as specified by Fannie Mae unless an appeal is made. For repurchase requests made on an active loan, (a loan that has not been foreclosed upon or liquidated) the payment of the repurchase price may be made by the seller/servicer with its next scheduled remittance following the completion of the 60-day period.

Appeal Process

After January 1, 2013 a responsible party may submit a written appeal of Fannie Mae's repurchase, indemnification or make whole payment request within 60 days of its receipt of Fannie Mae's request. Fannie Mae, in its discretion, may identify a shorter or longer period of time to appeal in the repurchase request based upon circumstances at the time. The responsible party must submit to Fannie Mae all supporting documentation related to the appeal at one time in one consolidated package. The appeal must identify the section of the *Servicing Guide* and/or Lender Contract that supports the appeal. Written notification of a responsible party'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 applicable 60-day time frame or the time frame identified by Fannie Mae in the request for repurchase, indemnification, or a make whole payment, it will be assumed that the responsible party does not contest the repurchase, indemnification or make whole demand and the repurchase, indemnification or make whole funds are due to Fannie Mae. Thereafter, the appeal process will be unavailable to the responsible party for that particular request.

If a responsible party submits a timely written appeal and Fannie Mae denies the appeal, the responsible party must 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 take one of four actions. It must either a) complete the repurchase of the mortgage loan or property; b) submit the indemnification or make whole payment c) submit a second appeal if it has additional material information, or d) if the repurchase involves an active loan that will be involved in a servicing transfer, the responsible party must notify Fannie Mae of the name of the new servicer and the date of the servicing transfer. For repurchase requests made on an active loan, the payment of the repurchase price may be made by the servicer with its next scheduled remittance following the completion of the 15 day period.

There are times when a repurchase of an active loan will involve the transfer of servicing to a new servicer. In such a situation RESPA requires that the borrowers involved in the servicing transfer receive certain notices in advance of the servicing transfer. If the repurchase of an active loan will involve a servicing transfer to a new servicer, Fannie Mae will provide the parties with additional time to process the repurchase so that all regulatory notices can be provided prior to the repurchase. However, Fannie Mae does require that the party responsible for such a repurchase notify Fannie Mae within the 15 day period described above that a servicing transfer will take place to the identified new servicer and the date of the servicing transfer. Once the transferring servicer has timely notified Fannie Mae that there will be a servicing transfer on an active mortgage loan, the repurchasing lender must work with the current servicer to provide all necessary legal notices to the borrower. All repurchases of active loans involving a servicing transfer must occur at month end as quickly as reasonably possible following Fannie Mae's repurchase request or reaffirmation.

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.

Retention of Records Following Repurchase or Reimbursement

As part of this Announcement sellers/servicers are advised that if a mortgage loan or property is repurchased or a make whole payment remitted, the responsible party must keep the individual mortgage loan records for at least four years (measured from the date of borrower payoff or the date that any applicable claim proceeds are received), unless applicable law requires longer retention or Fannie Mae specifies that the records must be retained for a longer period. The responsible party must make copies of the individual mortgage loan records available to Fannie Mae upon its request.

Miscellaneous Contractual Changes

Effective with this Announcement, Fannie Mae is making certain changes to its contract that will eliminate or adopt certain definitions and provisions.

Definitions

Servicing Guide, Part XII: Glossary

In addition to the definition of "make whole payment" and "responsible party" previously referenced and the removal of the definition of "make whole amount", the following new definition shall be added to the *Servicing Guide, Part XII: Glossary*:

- "imputed interest": means the interest that Fannie Mae assesses on a loan after it has been foreclosed or liquidated in order to compensate it for the loss of the use of the funds advanced.

Choice of Law

Servicing Guide, Part I, Chapter 2: Contractual Relationship

Effective with this Announcement Fannie Mae is adopting New York law as its choice of law provision for its Lender Contract. The Guide shall be revised to include the following sentence at the end of *Servicing Guide*,

Part 1, Section 201: “This Guide shall be construed, and the rights and obligations of Fannie Mae and the seller or servicer hereunder determined, in accordance with the laws of the State of New York without regard to its conflict of law rules.”

Clarifications of Existing Guide sections

Effective with this Announcement, Fannie Mae is clarifying the section of the Guide on indemnification and specifying that all payments for indemnification are due within 60 days of demand.

Indemnification

Servicing Guide, Part I, Section 201.05: Indemnification for Losses

Effective with this Announcement, Fannie Mae is clarifying that a seller/servicer's indemnification obligation relating to "losses, damages, judgments, claims, legal actions, and legal fees" includes all "costs and expenses".

Electronic Records

Servicing Guide, Part I, Section 402: Electronic Records

Effective with this Announcement Fannie Mae is providing clarification such that Fannie Mae may provide notices, demands, or requests, including notices of defect and demand letters for indemnification or repurchases, to sellers/servicers in accordance with the electronic record provisions to this Guide.

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

Gwen Muse-Evans
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Chief Risk Officer for Credit Portfolio Management