

***Servicing Guide* Announcement SVC-2013-12**

June 12, 2013

Servicer and Responsible Party Obligations for Bifurcated Mortgage Loans

***Servicing Guide*, Part I, Section 207: Repurchase or Mortgage Substitution Requirements**

Fannie Mae is clarifying existing obligations and introducing new obligations for servicers and responsible parties in connection with bifurcated mortgage loans, including the processes required for the repurchase, make whole payment, or indemnification payment of a bifurcated mortgage loan.

A “bifurcated mortgage loan” is a mortgage loan or property for which the current servicer is not the responsible party for the selling representations and warranties and/or for the prior servicing responsibilities or liabilities. The “responsible party” is 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.

In this Announcement, a bifurcated mortgage loan that has not been foreclosed upon is referred to as an “active bifurcated mortgage loan.” A bifurcated mortgage loan that has been through foreclosure or Mortgage Release™ but has not been sold by Fannie Mae is referred to as an “acquired bifurcated property.”

This Announcement describes the requirements to be met by the servicer and responsible party for bifurcated mortgage loans including:

- Issuance of Repurchase Request, Request for a Make Whole Payment, or Request for Indemnification
- Issuance of Repurchase Statement
- Remittance of Bifurcated Repurchase Price and Appeal Process
- Servicer’s Failure to Comply
- Hiring of Servicer
- Fannie Mae Custodial Collection Account
- Processing of Funds Following Remittance of the Bifurcated Repurchase Price
- Conflict of Interest
- Sharing of Information
- Mortgage Loan Files and Retention of Records
- Release of Records
- Disputes Between the Responsible Party and Servicer

The effective date for the policies described in this Announcement is September 1, 2013.

Issuance of Repurchase Request, Request for a Make Whole Payment, or Request for Indemnification

When Fannie Mae identifies a selling or servicing defect on a bifurcated mortgage loan and elects a

repurchase, a make whole payment, or an indemnification payment as the remedy for the breach, Fannie Mae will issue the request for the repurchase, make whole payment, or indemnification payment to the breaching responsible party.

- If Fannie Mae requests an indemnification payment on a bifurcated mortgage loan, the responsible party must remit the indemnification funds directly to Fannie Mae.
- If Fannie Mae determines that the appropriate remedy is a repurchase or make whole payment on a bifurcated mortgage loan, the current servicer will be responsible for
 - managing the repurchase of an active bifurcated mortgage loan or acquired bifurcated property,
 - receiving the repurchase funds or make whole payments from the responsible party, and
 - promptly remitting all funds to Fannie Mae in accordance with this Announcement and the *Servicing Guide*.

A servicer that services a bifurcated mortgage loan must comply with all of the terms of the *Servicing Guide*, except as provided in this Announcement.

The responsible party for a bifurcated mortgage loan that is subject to a remedy request can appeal by following the appeal process described in the *Servicing Guide* in Part I, Section 207:03, Timing of Repurchase, Make Whole and Appeal Rights, and in Announcement SVC 2012-21, *Servicing Guide Updates to Conform to the FHFA Directive on Harmonized Contracts*. No additional time will be granted for the appeal or for the remittance of payments because the request involves a bifurcated mortgage loan.

If the lender believes it is not the responsible party, it must promptly notify Fannie Mae that it disputes being the responsible party for the bifurcated mortgage loan. Fannie Mae's determination of responsible party is final.

Issuance of Repurchase Statement

All servicers of bifurcated mortgage loans must establish and communicate a unique email address that is designated for responsible parties to use to request a Repurchase Statement.

Make Whole Payment or Acquired Bifurcated Property Transactions

Prior to paying the Bifurcated Repurchase Price, as defined below, the responsible party must obtain a loss statement from Fannie Mae. The loss statement issued on a bifurcated mortgage loan is a statement of the partial amount due to Fannie Mae for a make whole payment or purchase of an acquired bifurcated property, since it does not include the Servicer Repurchase Portion, as defined below. The loss statement is obtained by accessing Fannie Mae's Quality Assurance System (QAS). If the loss statement is not available on QAS or the responsible party does not have QAS access, it may be obtained by submitting a request by email to crt_fm_loss_statement_requests@fanniemae.com.

The responsible party must promptly contact the servicer at its designated email address to request a statement of the full amount due to Fannie Mae (a Repurchase Statement).

When it requests the Repurchase Statement from the servicer, the responsible party must provide the servicer with a copy of a current loss statement.

Active Bifurcated Mortgage Loan Transactions

The servicer must calculate the Bifurcated Repurchase Price for an active bifurcated mortgage loan from its books and records. The responsible party must promptly contact the servicer at its designated email address to request the Repurchase Statement. No loss statement will be available from Fannie Mae for an active bifurcated mortgage loan.

The servicer must forward an accurate and complete Repurchase Statement for the bifurcated mortgage loan

at issue to the responsible party within ten business days of Fannie Mae's or the responsible party's request, once the responsible party has indicated that it will pay the full amount due. It is the responsible party's duty to notify the servicer that it has agreed to pay the full amount due. The current servicer is authorized and directed to issue the Repurchase Statement to lenders that are identified either by the lender or by Fannie Mae as the responsible party for an outstanding payment obligation on a bifurcated mortgage loan.

Calculation of Bifurcated Repurchase Price for a Bifurcated Mortgage Loan

Servicing Guide, Part I, Section 207.01: Mortgage Loan Repurchases requested by Fannie Mae; Part I, Section 207.07: Servicer's Mandatory Repurchase of Certain MBS Loans; Part VI, Section 201: Repurchase of Regular Servicing Option MBS Mortgage Loans and Repurchase of Mortgage Loans Previously Removed from MBS Pools; Part VI, Section 202: Repurchase Proceeds; Part VI, Section 302.03: Mortgage Loans Delinquent for 24+ Months and Part X, Section 403.04: Interest Repurchased

The sum of the Fannie Mae Repurchase Portion (defined below) and the Servicer Repurchase Portion (defined below), less credits for the PMI Payment Credits and Fannie Mae Payments (as defined below) will equal the "Bifurcated Repurchase Price" for a bifurcated mortgage loan. The amount quoted by the servicer on the Repurchase Statement must equal the Bifurcated Repurchase Price.

The Fannie Mae Repurchase Portion is defined as the sum of:

- the unpaid principal balance, with adjustments for any active bifurcated mortgage loan as required by Part VI, Section 202, Repurchase Proceeds, of the *Servicing Guide*;
- interest on an active bifurcated mortgage loan calculated in accordance with the *Servicing Guide*, plus delinquent interest, plus imputed interest on either an acquired bifurcated property or a make whole payment; and
- expenses that Fannie Mae has incurred, including, without limitation, advances for which Fannie Mae has previously reimbursed the servicer, and any fees and costs that are otherwise due to Fannie Mae under the servicer's and responsible party's Lender Contract.

Fannie Mae will not pay the servicer a termination fee when there is a repurchase of an active bifurcated mortgage loan or acquired bifurcated property. The servicer must not assess late charges or other fees to the responsible party due to any possible delay by the responsible party in remitting the Bifurcated Repurchase Price to the servicer.

The Servicer Repurchase Portion is defined as any and all fees and costs that the servicer has incurred in servicing the bifurcated mortgage loan that are eligible for reimbursement according to the terms of the *Servicing Guide* but which have not been reimbursed. These fees and costs may include, without limitation, escrow advances for taxes and insurance and corporate advances for items such as property preservation fees, attorney's fees, and costs.

Credits on Repurchase Statements

The Repurchase Statement must include credits for PMI Payment Credits and for any Fannie Mae Payments, as defined below, that Fannie Mae reports to the servicer that it has received via the loss statement or such other method as determined by Fannie Mae. "PMI Payment Credits" are defined as

- the amount of any rescinded mortgage insurance premiums that were refunded by the primary mortgage insurance company on a lender-paid or borrower-paid mortgage insurance policy;
- any amounts received from borrowers following the rescission or cancellation of mortgage insurance that the servicer collected under the terms of the mortgage loan as loss reserve payments; and

- any other payments that have been received by the servicer or Fannie Mae from the primary mortgage insurer, including any payments made on claims filed.

“Fannie Mae Payments” are defined as any amount that Fannie Mae or the servicer may have received from

- the sale of the acquired bifurcated property;
- any escrow proceeds, net rental, or other income; and
- a third party as compensation for amounts that are directly related to the risk of owning the relevant mortgage loan, such as certain compensatory fees or indemnification amounts that Fannie Mae, in its sole discretion, has assessed against and collected from a party other than the responsible party.

Deferred Payment Obligations

A deferred payment obligation (DPO) is defined as the unpaid portion of the mortgage insurance claim where the failure to pay the full amount due on the claim is solely attributable to the mortgage insurer’s financial inability to pay or its insolvency. Fannie Mae bears the risk of loss that a DPO relating to a claim filed with a mortgage insurer for a properly delivered and serviced loan that meets all of Fannie Mae’s eligibility requirements is not ultimately collectible. A mortgage insurer’s financial inability to pay or its insolvency is not considered to be a failure by the servicer to keep coverage in force.

The responsible party is not responsible for the DPO on mortgage loans properly delivered to Fannie Mae that meet all of Fannie Mae’s eligibility requirements and which were properly serviced after delivery. However, when there is a demand for repurchase or make whole payment on a mortgage loan, the responsible party must pay the servicer to remit to Fannie Mae the full amount of the Bifurcated Repurchase Price. The Bifurcated Repurchase Price must not be reduced by the DPO and must only include a credit for the mortgage insurance payment actually paid by the mortgage insurance company. Once the responsible party has paid the Bifurcated Repurchase Price to Fannie Mae, the responsible party becomes the owner of the bifurcated mortgage loan or acquired bifurcated property, if applicable.

Following the payment of the Bifurcated Repurchase Price, Fannie Mae agrees that the responsible party will succeed to all of Fannie Mae’s right title and interest in any remaining DPO on the subject mortgage loan. Fannie Mae will no longer have any claim to the remaining DPO pending on the subject mortgage loan. Fannie Mae agrees to execute such documents as are necessary to convey all its rights to the DPO to the responsible party, once the responsible party has remitted the full Bifurcated Repurchase Price to Fannie Mae, provided that Fannie Mae will at all times retain the right to be indemnified according to Part I, Section 201.05, Indemnification for Losses, of the *Servicing Guide*.

Once the responsible party has completely satisfied its payment obligations to Fannie Mae with respect to the repurchase or make whole demand, the servicer and responsible party must work together to notify the relevant mortgage insurance company that any future DPO payments must be remitted to the responsible party and not to the servicer or to Fannie Mae. In the event the servicer receives a DPO payment from a mortgage insurer after Fannie Mae has been made whole on a loan by a responsible party, the servicer must promptly remit those DPO payments to the responsible party. It is up to the responsible party to pursue the collection from the mortgage insurance company of any DPO that is outstanding following Fannie Mae’s receipt of the Bifurcated Repurchase Price.

Remittance of Bifurcated Repurchase Price and Appeal Process

Active Bifurcated Mortgage Loan Repurchases

When the current servicer for an active bifurcated mortgage loan will continue to service the mortgage loan for the responsible party following the repurchase, the responsible party must pay the servicer the Bifurcated

Repurchase Price in sufficient time so that the servicer can remit the Bifurcated Repurchase Price to Fannie Mae within 60 days of the repurchase request (or with its next scheduled remittance following the completion of the 60-day period) unless a proper appeal under the Guide is made by the responsible party. The appeal process for a repurchase request on an active bifurcated mortgage loan in which the servicing is not being transferred is described in Part I, Section 207.03, Timing of Repurchase, Make-Whole, and Appeal Rights, of the *Servicing Guide* and in Announcement SVC-2012-21.

When the current servicer will not continue to service the bifurcated mortgage loan following the repurchase, the responsible party must notify Fannie Mae as described in Announcement SVC-2012-21 that there will be a servicing transfer on an active bifurcated mortgage loan. The responsible party must work with the new servicer to provide all necessary legal notices to the borrower. All servicing transfers due to the repurchase of an active bifurcated mortgage loan must occur at month end as quickly as reasonably possible following Fannie Mae's repurchase request or reaffirmation of the repurchase request as described in Announcement SVC 2012-21.

- When the Bifurcated Repurchase Price is remitted by the responsible party to the servicer on an active bifurcated mortgage loan with a scheduled/scheduled or scheduled/actual remittance schedule, the responsible party is required to remit the Bifurcated Repurchase Price to the servicer no less than two business days prior to the end of the month.

Acquired Bifurcated Property Repurchases

A responsible party must pay the servicer the Bifurcated Repurchase Price in sufficient time so that the servicer can remit the Bifurcated Repurchase Price to Fannie Mae within 60 days after the responsible party's receipt of the repurchase request on an acquired bifurcated property, unless a proper appeal is made by the responsible party.

For acquired bifurcated properties, the servicer must identify for the responsible party the days on which it will accept the remittance of the Bifurcated Repurchase Price and transfer the acquired bifurcated property to the responsible party. These repurchase days must be scheduled to occur at least twice a month and no less than every 15 days. Once a servicer has issued a Repurchase Statement on an acquired bifurcated property, the responsible party is required to remit the Bifurcated Repurchase Price to the servicer on the date that is no less than two business days prior to the day in which the servicing of the acquired bifurcated property will change from the servicer servicing the acquired bifurcated property for Fannie Mae to the current or new servicer servicing the acquired bifurcated property on behalf of the responsible party or its successor or assigns.

Make Whole Payment

A responsible party must pay the servicer for remittance to Fannie Mae the Bifurcated Repurchase Price (which in this instance is equal to the make whole payment) within 60 days after receipt of the make whole payment request unless a proper appeal is made under the Guide.

Responsible Party and Servicer's Obligation

The responsible party is also responsible for any interest that accrues as part of the Bifurcated Repurchase Price if it elects to remit the Bifurcated Repurchase Price to the servicer earlier than two business days prior to month end for an active bifurcated mortgage loan or on the dates specified by the servicer for the transfer of the acquired bifurcated property. The servicer must take no longer than two business days from the date the servicer receives the Bifurcated Repurchase Price from the responsible party to remit the Fannie Mae Repurchase Portion to Fannie Mae for an acquired bifurcated property or make whole payment. The effective date of the repurchase is the date that the servicer receives the Bifurcated Repurchase Price from the responsible party.

Application of Bifurcated Repurchase Price

The servicer must first retain the Servicer Repurchase Portion (as described above) of the Bifurcated Repurchase Price to reimburse itself for amounts due it by Fannie Mae that are reimbursable under the Lender Contract but which have not been reimbursed. In the event the responsible party remits an amount less than the Bifurcated Repurchase Price to the servicer, the servicer must deduct the Servicer Repurchase Portion and remit any remaining funds to Fannie Mae as a partial payment of the Fannie Mae Repurchase Portion. Fannie Mae will seek the balance of the Bifurcated Repurchase Price from the responsible party.

Servicer's Failure to Comply

In the event the servicer fails to issue the Repurchase Statement within ten business days of the responsible party's request for the Repurchase Statement (provided that the responsible party has provided the servicer with a loss statement for an acquired bifurcated property or make whole payment), and/or the servicer exceeds the required timeframe in remitting the Bifurcated Repurchase Price to Fannie Mae, the servicer will be responsible for any delinquent or imputed interest assessed by Fannie Mae for the number of days the servicer exceeds the designated timeframes and for any additional fees or costs that may be incurred due to the delay. The servicer must add its own funds in the remittance of the Fannie Mae Repurchase Portion to Fannie Mae to make up for any interest, fees or costs assessed due to its failure to comply with the designated timeframes.

Hiring of Servicer

It is the obligation of the responsible party as the new owner of the bifurcated mortgage loan or acquired bifurcated property to either service the loan or bifurcated property itself following the effective date of repurchase or to hire an entity to service the loan. The current servicer is not permitted to service the active bifurcated mortgage loan or acquired bifurcated property for the responsible party under the terms of the Fannie Mae Lender Contract following repurchase, as the servicing contract between Fannie Mae and the servicer for such loan terminates with the repurchase.

- The responsible party must at all times keep the best interests of the borrower in mind when transferring the servicing of a bifurcated mortgage loan. For example, this might include delaying the servicing transfer a month at its own expense in the event all steps necessary to assure a smooth transfer of the servicing have not been completed at the time the RESPA notices are required to be mailed to the borrower, if applicable.
- Promptly after asking the servicer for a Repurchase Statement for an active bifurcated mortgage loan or an acquired bifurcated property, the responsible party must advise the servicer of the name of the legal entity that will be servicing the active bifurcated mortgage loan or acquired bifurcated property following its payment of the amount due. This notification must include the name of a contact at the new servicer that the current servicer can work with to properly complete the servicing transfer.

Fannie Mae Custodial Collection Account

***Servicing Guide*, Part IX, Section 101.01: P&I Accounts**

A servicer must deposit the Fannie Mae Repurchase Portion in one or more principal and interest (P&I) custodial accounts that it has established for Fannie Mae according to the terms of the *Servicing Guide*. All funds related to the Bifurcated Repurchase Price that are received for a bifurcated mortgage loan must be credited to the custodial account no later than one business day after they are received.

Processing of Funds Following Remittance of the Bifurcated Repurchase Price

In the event the servicer receives any PMI Payment Credits or DPO Payments following its receipt and remittance of the Bifurcated Repurchase Price from the responsible party, the servicer must promptly remit these funds directly to the responsible party within 15 business days of their receipt. The servicer must remit these custodial funds to the responsible party on behalf of Fannie Mae and must not reduce the amount of the PMI Payment Credits or DPO Payments by any amounts the responsible party may owe the servicer outside of the Fannie Mae Lender Contract.

In the event Fannie Mae has, in its sole discretion, assessed any compensatory fees or made any demands for indemnification from a party other than the responsible party in connection with the mortgage loan and the amount assessed is considered an investor loss that would have reduced the Bifurcated Repurchase Price if it had been paid prior to Fannie Mae's receipt of the Bifurcated Repurchase Price, Fannie Mae agrees to use reasonable efforts to forward such amounts it has collected directly to the responsible party upon receipt. Fannie Mae is not obligated to pursue collection of such amounts following receipt of the Bifurcated Repurchase Price.

Conflict of Interest

Servicers are not permitted to use their relationship as a servicer with Fannie Mae as an opportunity to collect from the responsible party any amounts that may be independently due the servicer from the responsible party. To the extent the servicer and the responsible party have separate contracts outstanding between them in which other fees are due the servicer, such as servicing release premiums, excess fee amounts, etc., those amounts must be separately billed by the servicer to the responsible party and must not be tied in any way to the Bifurcated Repurchase Price due Fannie Mae. Any attempt by the servicer to combine the amounts due or to refuse to accept any payment that does not also include other amounts which may be due from the responsible party to the servicer outside of the Lender Contract, will violate the conflict of interest policy described in Part I, Section 309, Conflict of Interest/Confidentiality of the *Servicing Guide*.

Sharing of Information

The servicer and responsible party must cooperate with each other in promptly sharing information necessary to substantiate the amounts identified on the Repurchase Statement. The servicer must provide the responsible party with documentation reasonably necessary to support all amounts included on the Repurchase Statement within ten business days of the responsible party's written request.

If the repurchase or make whole request involving a bifurcated mortgage loan is based exclusively on a breach of a selling representation or warranty, the servicer is not authorized to share with the responsible party any of the servicing records including collection notes, other than data/documents needed to substantiate the Bifurcated Repurchase Price. For example, payment histories to validate the last paid installment or copies of mortgage loan modification documents needed to validate the mortgage loan modification terms or preliminary servicing transfer data reasonably necessary to transfer servicing if the servicing is to be transferred may be shared. Once the parties have agreed to the servicing transfer date for an active bifurcated mortgage loan, the current servicer is authorized to provide the responsible party or its designee the information it needs to meet all time-critical deadlines such as the dates of scheduled mediation or litigation hearings, tax sales, foreclosure sale dates, etc., that are scheduled to take place shortly after the transfer date.

Mortgage Loan Files and Retention of Records

The servicer must maintain the original documents related to the origination and servicing of the mortgage loans and abide by existing requirements in the *Servicing Guide* in Part I, Section 205.06, Transfer of Individual Mortgage Loan Files and Portfolio Information and Section 301.02.01, Underwriting Performance Reviews. The

fact that a bifurcated mortgage loan is involved does not change the servicer's obligation as servicer to maintain the original documents related to the origination and servicing of the bifurcated mortgage loan.

The servicer and the responsible party must keep

- all of the individual mortgage loan records, including, but not limited to those identified in E-2-07, Post-Closing Mortgage Loan File Documentation, of the *Selling Guide*,
- any and all servicing records for the time it serviced the bifurcated mortgage loan;
- the servicing records for the time any prior servicer serviced the bifurcated mortgage loan; and
- the servicing records for a bifurcated mortgage loan for at least four years from the date Fannie Mae is paid in full 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 mortgage loan records available to Fannie Mae upon its request (as described in Announcement SVC 2012-21).

The servicer and the responsible party must be able to retrieve and reproduce a complete, accurate, and clear copy of the individual mortgage loan file and servicing documentation in its original format for the time it may have serviced the bifurcated mortgage loan upon request by Fannie Mae, in accordance with the requirements of the *Selling and Servicing Guides* regarding retention and storage of records. Following the repurchase of the active bifurcated mortgage loan, the acquired bifurcated property, or the remittance of the make whole payment, the servicer and responsible party agree to make available to Fannie Mae or its designee at no cost to Fannie Mae, information, data, or documents related to the active bifurcated mortgage loan, the liquidation of the acquired bifurcated property, or the remittance of the make whole payment as may reasonably be requested or required by Fannie Mae any time prior to four years following the date Fannie Mae is paid in full.

Release of Records

Following Fannie Mae's receipt of the Bifurcated Repurchase Price, the responsible party is entitled to receive a copy of the records related to the origination and servicing of the bifurcated mortgage loan or the acquired bifurcated property, upon its request. The responsible party must advise the servicer which records, if any, it wishes to receive. The servicer must use commercially reasonable efforts to deliver all requested records to the responsible party or its designee.

Once Fannie Mae has received the Bifurcated Repurchase Price for the active bifurcated mortgage loan or acquired bifurcated property, the current servicer will no longer be servicing the active bifurcated mortgage loan or acquired bifurcated property for Fannie Mae. The current servicer's obligations to indemnify Fannie Mae, to maintain records, and to comply with the relevant terms of the *Servicing Guide* post-transfer will survive the repurchase or make whole payment.

Disputes Between the Responsible Party and Servicer

Any disputes between the servicer and the responsible party about amounts due between them under separate contracts must not delay or interfere with the responsible party's obligation to Fannie Mae to promptly repurchase the bifurcated mortgage loan, acquired bifurcated property, or remit the make whole payment. In the event the responsible party has a good faith dispute about the calculation of the Bifurcated Repurchase Price, even after the servicer has provided documentation to support the amount due, the servicer and responsible party must work together to resolve the dispute and remit the Bifurcated Repurchase Price within the time frame required by the *Servicing Guide*.



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

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