

Servicing Guide Announcement SVC-2011-18

October 26, 2011

Updates to Delinquency Management and Default Prevention Requirements

This Announcement describes updates and clarifications to several delinquency management and default prevention requirements, including:

- Post Referral to Foreclosure Solicitation Letter
- Uniform Borrower Assistance Form
- Distant Employment Transfer Including Permanent Change of Station Orders
- Imminent Default Eligibility for Fannie Mae Modifications
- Housing Finance Agency and Other Third Party Modification Assistance
- Conversion from Fannie Mae non-HAMP Trial Period Plan to a Forbearance Plan
- Modifying Texas Section 50(a)(6) Loans
- Calculating the Monthly Housing Expense-to-Income Ratio
- Timeline for Preparing the Modification Agreement
- Extending the Term with a Modification
- Notifying Credit Repositories
- Reminder of Duties Regarding the Fannie Mae HAMP
- Certification Prior to Foreclosure Sale

Servicers must follow the policies and procedures outlined herein for delinquency management and default prevention for all conventional mortgage loans held in Fannie Mae's portfolio, those purchased for Fannie Mae's portfolio but subsequently securitized into MBS pools (known as Pooled from Portfolio or PFP mortgage loans), those originally delivered as part of an MBS pool that have either a special or regular servicing option or a shared-risk MBS pool for which Fannie Mae or the servicer markets the acquired property, or other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement.

While Fannie Mae does not require that its foreclosure prevention alternatives (for example, modifications or preforeclosure sales) be used for regular servicing option MBS mortgage loans, shared-risk MBS pool for which the servicer markets the acquired property, or any other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement, Fannie Mae encourages servicers to use them for these mortgage loans. However, when a servicer decides to use Fannie Mae's foreclosure prevention alternatives for such mortgage loans, Fannie Mae is not responsible for any losses or expenses the servicer incurs when applying the requirements in this Announcement. In addition, Fannie Mae will not pay servicer incentive fees in connection with foreclosure prevention alternatives on such mortgage loans.

Except where noted, the changes and clarifications addressed in this Announcement apply to both Fannie Mae HAMP and Fannie Mae non-HAMP requirements.

Effective Date

Unless otherwise indicated, servicers are required to implement the revised requirements in this Announcement immediately for all mortgage loans that become delinquent on or after the date of this Announcement and with respect to the loan modification requirements, loans evaluated for a modification on or after the date of this Announcement.

Post Referral to Foreclosure Solicitation Letter

Servicing Guide, Part VII, Section 203: Letters

Announcement 2011-08R requires that within five business days after referral to foreclosure, the attorney (or trustee) conducting foreclosure proceedings must send the borrower a *Post Referral to Foreclosure Solicitation Letter*. However, the letter may be sent at a later date if necessary to comply with applicable law.

The Announcement also includes the required content for the *Post Referral to Foreclosure Solicitation Letter*. A sample letter was provided on eFannieMae.com, with instructions that the attorney (or trustee) may amend the letter in certain circumstances, and that other notices and disclosures may be added when appropriate.

Fannie Mae is reiterating that the attorneys (or trustees):

- are only required to send a written communication to the borrower that includes clear language containing the information indicated in the *Post Referral to Foreclosure Solicitation Letter* section of the Announcement;
- may send the letter at a later date if necessary to comply with applicable law, rather than within five business days after referral;
- must use a letter that complies with any applicable law, including the Fair Debt Collection Practices Act, the provisions of the United States Bankruptcy Code, and any applicable state or local laws; and
- may change or delete any of the items required in the letter as set out in the Announcement if the items are noncompliant with any applicable law.

Also, in jurisdictions where borrowers must receive state, local, or court required letters or notices after a referral to the attorney or trustee regarding foreclosure prevention alternatives such as settlement conferences or mediation, the *Post Referral to Foreclosure Solicitation Letter* may be waived at the attorney's discretion.

Finally, the *Post Referral to Foreclosure Solicitation Letter* is only required for loans that become delinquent on or after October 1, 2011. The letter is not required for foreclosure referrals after October 1, 2011, for loans that became delinquent prior to October 1, 2011.

Fannie Mae has eliminated the sample model *Post Referral to Foreclosure Solicitation Letter* posted on eFannieMae.com. The servicer must work with the foreclosure attorney (or trustee) to ensure the letter meets the requirements indicated above and with applicable law.

Uniform Borrower Assistance Form

Servicing Guide, Part VII, Section 404: Repayment Plan and Chapter 6: Foreclosure Prevention Alternatives

Announcement SVC-2011-08R introduced the *Uniform Borrower Assistance Form* (Form 710). Form 710 includes a Hardship Affidavit on which the borrower is required to provide a written explanation describing the specific nature of the borrower's current hardship.

If a borrower has a hardship that is affecting his or her ability to make a payment and the hardship is not listed on the Form 710, the borrower should not check any of the hardship reasons on the Hardship Affidavit if the reasons do not apply. Instead, the servicer must advise the borrower to provide details of the hardship in the borrower's written explanation and provide applicable documentation to support the hardship. If the servicer determines that the borrower's hardship caused an increase in the borrower's expenses or a decrease in the borrower's income due to circumstances outside the borrower's control and that an alternative to foreclosure is available, the servicer should proceed as directed by the *Servicing Guide*.

Distant Employment Transfer Including Permanent Change of Station Orders

***Servicing Guide*, Part VII, Section 403: Forbearance, and Part VII, Chapter 6: Foreclosure Prevention Alternatives**

Fannie Mae is updating its requirements to include distant employment transfer as an eligible hardship for forbearance or a foreclosure prevention alternative under certain conditions, as described below.

The borrower must have a financial hardship attributable to being transferred or relocated to a distant job location to be eligible under this hardship for a forbearance or foreclosure prevention alternative. Incurring additional expenses for moving and housing in the new location, which affects the borrower's ability to pay both those expenses and the mortgage debt, is an example of a financial hardship.

One example of an involuntary distant employment transfer is a Permanent Change of Station (PCS) order. In the United States armed forces, a PCS is the official relocation of an active duty military servicemember or civilian employee of the U.S. armed forces to a different duty location, such as a military base.

A voluntary employment transfer is not considered an eligible hardship.

Imminent Default Eligibility for Fannie Mae Modifications

***Servicing Guide*, Part VII, Section 602.02: Modifying Conventional Mortgage Loans**

Announcement SVC-2011-08R and Announcement SVC-2011-06: *Updates to Imminent Default Definition and Determining Market Value for Preforeclosures* provide updates to the eligibility requirements relating to imminent default for Fannie Mae non-HAMP mortgage loan modifications.

With this Announcement, Fannie Mae is clarifying that only principal residences are eligible under the imminent default criteria for a Fannie Mae non-HAMP modification. In addition, mortgage loans secured by investment properties or second homes are not eligible for a Fannie Mae non-HAMP modification if the mortgage loan is current or less than 60 days delinquent.

Fannie Mae will consider exceptions to these requirements only when there are extenuating circumstances. The servicer must submit such a request to Fannie Mae for review if the servicer believes, based on the borrower's circumstances, that a modification is appropriate.

Housing Finance Agency and Other Third Party Modification Assistance

***Servicing Guide*, Part III, Section 102.01: Additional Principal Payments and Section 102.06: Pending Modifications**

Section 102.01 of the *Servicing Guide* states that in the case of a delinquent mortgage loan, any funds submitted must be applied toward curing the delinquency, and if there are any remaining funds, the servicer may then apply them as an additional principal payment. Section 102.06 requires the servicer to hold as unapplied funds any amounts received for lump-sum payments, interest, or installments.

Fannie Mae is modifying these sections to include requirements that apply when the servicer receives funds from a third party, such as a Housing Finance Agency (HFA) or similar entity that is assisting the borrower in qualifying for a Fannie Mae HAMP or non-HAMP modification. The servicer must accept such funds contingent upon the following:

- application of funds is permitted by the mortgage documents and by applicable law;
- the mortgage retains its first lien status;
- neither the servicer nor Fannie Mae will be required to match any assistance provided by the third party or HFA;
- the third party or HFA will pay the servicer the full amount of the agreed upon assistance (in one lump-sum payment); and
- if after the delinquency is cured, the servicer applies the funds as additional principal payment, the funds must be applied to the interest-bearing unpaid principal balance.

The timeframe in which a servicer must evaluate a borrower for the modification will be contingent upon the delinquency status of the mortgage loan and when a complete Borrower Response Package is received. Servicers are reminded of the delinquency management and default prevention timelines in Announcement SVC-2011-08R.

Servicers must identify and track mortgage loans of borrowers participating in state programs in the event that Fannie Mae requests this information.

Conversion from Fannie Mae non-HAMP Trial Period Plan to a Forbearance Plan

***Servicing Guide*, Part VII, Section 403: Forbearance and Part VII, Section 602.02: Modifying Conventional Mortgage Loans**

In Announcement SVC-2010-15: *Updates to Fannie Mae's Forbearance, Income Eligibility, and Home Affordable Modification Program Requirements*, Fannie Mae updated its requirements to allow a borrower who is currently in a HAMP Trial Period Plan and becomes unemployed the opportunity to withdraw from the HAMP Trial Period Plan and seek consideration for a standard forbearance plan.

In this Announcement, Fannie Mae is updating its requirements to allow the same option for a Fannie Mae non-HAMP modification Trial Period Plan. A borrower who is currently in a Fannie Mae non-HAMP Trial Period Plan and becomes unemployed may seek consideration for standard forbearance. The servicer, however, cannot require an unemployed borrower in a Trial Period Plan to convert to a standard forbearance plan.

Once the borrower completes the forbearance plan, the servicer must evaluate the borrower by following Fannie Mae's workout hierarchy. If the borrower is determined to be eligible for a Fannie Mae modification, the borrower must complete a new Fannie Mae Trial Period Plan.

To determine eligibility, the borrower must submit an updated Borrower Response Package if the previous documentation submitted is more than 90 days old. The borrower will not be required to resubmit the IRS Short Form Request for Individual Tax Return Transcript (IRS Form 4506T-EZ) if the servicer has already obtained a tax transcript for the most recent tax year.

The servicer is reminded that with respect to MBS mortgage loans, during any forbearance or Trial Period Plan, the servicer must continue to service the mortgage loan under Fannie Mae's standard guidelines in the *Servicing Guide* applicable to MBS mortgages.

Modifying Texas Section 50(a)(6) Loans

Servicing Guide, Part VII, Section 602.02: Modifying Conventional Mortgage Loans

Fannie Mae is reminding servicers that a Texas Section 50(a)(6) loan is eligible for both a Fannie Mae HAMP or non-HAMP modification. A servicer reviewing a Texas Section 50(a)(6) loan for a Fannie Mae modification must submit its recommendation to Fannie Mae through HSSN for review and decision, regardless of whether it meets the eligibility and terms indicated in the *Servicing Guide*.

If the servicer receives a notice from the borrower pursuant to Texas Section 50(a)(6) that a modification fails to comply with the Texas Section 50(a)(6) requirements, the servicer must immediately, but no later than seven business days after receipt, provide the borrower notice to Fannie Mae and collaborate with Fannie Mae on the appropriate response, including any cure that may be necessary, within the sixty-day time frame provided by the requirements of Texas Section 50(a)(6).

Calculating the Monthly Housing Expense-to-Income Ratio

Servicing Guide, Part VII, Section 602.02: Modifying Conventional Mortgage Loans

Fannie Mae is updating the current eligibility requirements for calculating the monthly housing expense-to-income ratio indicated in Announcement SVC-2011-08R for Fannie Mae non-HAMP modifications. Effective immediately, the servicer must include the projected monthly escrow shortage payment, if any, in the monthly housing expense-to-income payment. This change updates the monthly housing expense for primary residences, second homes, and investment properties.

The monthly housing expense is the sum of the following:

- principal and interest;
- hazard and flood insurance premiums (as applicable);
- real estate taxes;
- ground rent;
- special assessments;
- homeowners' association dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit);
- co-op corporation fees (less the pro rata share of the master utility charges for servicing individual units that is attributable to the borrower's unit); and
- the projected monthly escrow shortage payment (if applicable).

NOTE: *Monthly mortgage insurance premiums must be excluded from the PITIAS calculation.*

In the event the escrow analysis identifies a shortage (a deficiency in the escrow deposits needed to pay all future tax and insurance payments), the servicer must collect such funds from the borrower over a 60-month period unless the borrower decides to pay the shortage upfront. Any escrow shortage for future tax and insurance payments that is identified at the time of determining eligibility for a Fannie Mae non-HAMP modification may not be capitalized. Servicers are not required to fund any existing escrow shortage. A servicer may encourage a borrower to contribute to the escrow shortage upfront; however, that is not an eligibility requirement.

Timeline for Preparing the Modification Agreement

Servicing Guide, Part VII, Section 602.02: Modifying Conventional Mortgage Loans

Announcement SVC-2011-03: *Updates to Fannie Mae's Mortgage Modification Requirements* described the timeline for preparing a Loan Modification Agreement. Fannie Mae is clarifying that servicers must prepare the Loan Modification Agreement early enough in the trial period to allow sufficient processing time so that the modification becomes effective on the first day of the month following the trial period (Modification Effective Date). If the borrower does not make the final trial period payment until the end of the month in which it is due, the servicer may elect, at its option, to complete the Loan Modification Agreement with a Modification Effective Date that is the first day of the second month following the trial period. However, no additional trial period payment is required during the interim month. The Loan Modification Agreement must be prepared anytime prior to the completion of the trial period but in no instance can the Loan Modification Agreement be prepared on or after the Modification Effective Date.

The borrower's permanent modification will become effective when:

- the borrower has satisfied all of the requirements of the Trial Period Plan,
- the borrower and the servicer have executed the Loan Modification Agreement, and
- the Modification Effective Date (as set forth in the Loan Modification Agreement) has occurred.

As required by the *Servicing Guide*, the servicer must ensure that its communications with the borrower clearly convey that the mortgage modification will not be binding, enforceable, or effective unless and until the conditions set forth in the bullet points above have been satisfied.

As required by the *Servicing Guide*, a modification of any MBS mortgage loan can only become effective after it has been removed from the MBS pool. As a result, the Modification Effective Date must be after the MBS mortgage loan has been removed from the MBS pool. Servicers are reminded that mortgage loan modifications must be signed by an authorized representative of the servicer and must reflect the actual date of signature by the servicer's representative.

Extending the Term with a Modification

Servicing Guide, Part VII, Section 602.02: Modifying Conventional Mortgage Loans and Section 609: HAMP

In this Announcement, Fannie Mae is clarifying how to calculate the new term (duration) of the mortgage loan for a Fannie Mae HAMP or non-HAMP modification. The servicer must calculate the new term based upon the Modification Effective Date.

For example, if the Modification Effective Date is October 1, 2011, the servicer must extend the term 480 months from October 1, 2011. The new maturity date based on the modified loan would be September 1, 2051.

Notifying Credit Repositories

Servicing Guide, Part VII, Section 209: Notifying Credit Repositories

Fannie Mae is reminding servicers to provide a "full-file" status report for the mortgage loans it services for Fannie Mae to each of the four credit repositories. "Full-file" reporting means that the servicer must describe the exact status of each mortgage loan it is servicing for Fannie Mae as of the last business day of each month and identify the mortgage loan by its applicable Fannie Mae loan number. (A servicer may use a slightly later

cut-off date—for example, the end of a first week of a month—to ensure payment corrections, returned checks, and other adjustments related to the previous month's activity can be appropriately reflected in its report for that month.)

Statuses that must be reported for any given mortgage loan include, but are not limited to the following: new origination, current, delinquent (30-, 60-, 90-days, etc.), foreclosed, and charged off. The servicer must continue to report the mortgage loan up to and including the month of the liquidation (payoff, foreclosure, deed-in-lieu of foreclosure, or charge-off).

NOTE: A servicer may suspend reporting the status of a mortgage loan even though some payments are past due as long as the delinquency is directly attributable to an extensive natural disaster, during the tour of active duty for a borrower who has been granted military indulgence, or in the event of a unique hardship as described in the Servicing Guide.

The servicer is responsible for the complete and accurate reporting of mortgage loan status information to the repositories and for resolving any disputes that arise from the information it reports. Servicers must regularly review and assess the adequacy of internal controls and procedures relating to the reporting of mortgage loan status information to credit repositories to ensure completeness, accuracy, and compliance with applicable law. Servicers must take remedial steps, as appropriate, if any deficiencies or issues are identified as a result of their review of internal controls or processes.

Reminder of Duties Regarding the Fannie Mae HAMP

Servicing Guide, Part VII, Section 609: HAMP

Fannie Mae's priority is to keep borrowers in their homes. Loan modifications, including the Fannie Mae HAMP, are an important part of the strategy to help homeowners avoid foreclosure, stabilize communities, and reduce long-term credit losses.

The Treasury Department issued uniform guidance for HAMP in Supplemental Directive 09-01 (SD 09-01) on April 6, 2009. As indicated in SD 09-01, as well as all subsequent HAMP-related policy guidance requirements provided by Treasury, its guidance is applicable to "Non-GSE Mortgages" only.

Details regarding contractual obligations for servicing loans for Fannie Mae are set forth in Fannie Mae's *Servicing Guide*. Fannie Mae notifies servicers of changes and updates to its *Servicing Guide* policies and procedures through announcements and lender letters. To that end, Fannie Mae issued Announcement 09-05R: *Introduction of the Home Affordable Modification Program, HomeSaver Forbearance™, and New Workout Hierarchy*, on April 21, 2009 for adoption and implementation of Fannie Mae's HAMP program simultaneous with the publication of SD 09-01. Announcement 09-05R requires all Fannie Mae-approved servicers to participate in Fannie Mae's HAMP for all eligible Fannie Mae mortgage loans.

In cases where Fannie Mae does not issue an Announcement, or other notice, to adopt policy changes initiated by a Treasury Supplemental Directive for Non-GSE Mortgages or any other regulator, servicers must continue to service Fannie Mae mortgage loans in accordance with the requirements provided in the *Servicing Guide* unless and until such time as Fannie Mae issues an update to its *Servicing Guide* policies and procedures.

On June 6, 2011, Fannie Mae published Announcement SVC-2011-08R, announcing new servicing requirements to streamline and simplify servicing processes, help servicers to contact delinquent borrowers more effectively, determine borrower eligibility, and offer foreclosure prevention alternatives to struggling homeowners. The requirements outlined in Announcement SVC-2011-08R are applicable to all mortgage loans, including mortgage loans eligible for Fannie Mae's HAMP.

Announcement 2011-08R also introduced the *Uniform Borrower Assistance Form* (Form 710). Form 710 provides the servicer with the borrower's financial and hardship information and provides the borrower with a list of required documentation to be considered for an alternative to foreclosure. Form 710 replaces the Treasury's *MHA Request for Modification and Affidavit* (RMA). Fannie Mae is reminding servicers, that as of October 1, 2011, Form 710 must be included in the Borrower Solicitation Letters for all mortgage loans which become delinquent on or after October 1, 2011. For loans that were delinquent prior to October 1, 2011, if the servicer subsequently receives a Form 710, the servicer must accept the Form 710 as a substitute.

In addition to the requirements stated in Announcement 2011-08R, the servicer must create and follow an internal written policy to address situations where a borrower who has previously been denied for a Fannie Mae HAMP modification requests reconsideration based on a change in circumstances. For example, if the borrower was determined to be ineligible for a Fannie Mae HAMP modification because he or she did not meet the imminent default test but subsequently becomes delinquent, the servicer must review the borrower for a foreclosure prevention alternative following Fannie Mae's workout hierarchy.

A servicer's written policy may limit the number of reconsideration requests but at a minimum, the servicer must re-evaluate a borrower who experiences a change of circumstance at least once. If there is no change in circumstance, the servicer need not consider subsequent Fannie Mae HAMP modification requests. The servicer must ensure that its policy for change in circumstances is consistently applied for all borrowers with similar circumstances. Any determination regarding whether a change of circumstances has or has not occurred must be appropriately documented in the servicer's file.

Certification Prior to Foreclosure Sale

Servicing Guide, Part VIII, Section 105.02: Communication Regarding Workout Agreements

In Announcement SVC-2011-08R, Fannie Mae required the servicer to complete another review of the delinquency management activities for the account at least 7 days but no more than 15 days prior to the foreclosure sale. If based on the account review, the servicer determines that all delinquency management requirements have been met and that there is neither an approved payment arrangement nor a foreclosure alternative offer pending or accepted, the servicer must send written certification to the attorney (or trustee) at least 7 days but no more than 15 days prior to the foreclosure sale date indicating the attorney (or trustee) must continue with the foreclosure sale.

Fannie Mae is clarifying that if local jurisdictional requirements are such that the 7- to 15-day time frame prior to foreclosure sale needs to be extended in order to comply with jurisdictional requirements, then servicers should allow additional time to complete the review and provide the certification to the attorney sooner. For example, if the local jurisdiction requires a motion to be filed at least 20 days prior to foreclosure sale in order to postpone the sale, then the date for sending the certification must be extended so that there is sufficient time to allow for such a motion in the event the certification is not received.

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

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