Servicing Guide Announcement SVC-2012-22

November 9, 2012

Default-Related Legal Services

Fannie Mae is announcing new servicer requirements with respect to default-related legal services, which include foreclosure, loss mitigation (for example, deeds-in-lieu of foreclosure), bankruptcy, and related litigation, in connection with single-family mortgage loans owned or securitized by Fannie Mae. These new requirements are being implemented pursuant to the Federal Housing Finance Agency's (FHFA) October 2011 directive to Fannie Mae and Freddie Mac to phase out their existing attorney networks and to adopt consistent requirements, policies, and processes for managing default-related legal services.

This Announcement applies to default-related legal services in connection with all conventional or government single-family mortgage loans held in Fannie Mae's portfolio and MBS pool mortgage loans guaranteed by Fannie Mae.

The policies described in this Announcement will be added as new subsections to the *Servicing Guide* in Part III, Chapter 5: Notices of Liens or Legal Actions; Part VII, Chapter 5: Bankruptcy Proceedings; and Part VIII, Chapter 1: Foreclosures and Chapter 3: Acquired Properties. Fannie Mae is replacing the following sections of the *Servicing Guide* with the new policies outlined in this Announcement:

- Part III, Section 501: Uncontested Routine Legal Actions
- Part III, Section 502: Contested Routine Legal Actions
- Part III, Section 503: Nonroutine Legal Actions
- Part VII, Section 501: Selection of Bankruptcy Attorneys and Avoiding Delays in Case Processing
- Part VII, Section 501.01: Fannie Mae-Retained Attorneys
- Part VII, Section 501.02: Servicer-Retained Bankruptcy Attorneys
- Part VIII, Section 101: Routine vs. Non-Routine Litigation
- Part VIII, Section 106: Referral to Foreclosure Attorney/Trustee
- Part VIII, Section 106.01: Fannie Mae-Retained Attorneys
- Part VIII, Section 106.02: Special Rules for Arizona, California, and Washington Foreclosures
- Part VIII, Section 106.03: Servicer-Retained Attorneys/Trustees and Special Rules for Nevada
- Part VIII, Section 107.04: Bankruptcy Referrals

Unless otherwise noted, the *Servicing Guide* sections referenced in the body of this Announcement (and that are not included in the list above) remain in full force and effect. Several policies in this Announcement are consistent with current guidance and are reiterated here as a reminder to servicers.

This Announcement covers the following topics:

- Effective Date
- Law Firm Selection and Retention
- Law Firm Management and Oversight

- Notices of Liens or Legal Actions
- Effect of Environmental Hazards
- Foreclosure and Bankruptcy Attorney Fees
- Eviction Proceedings
- Special Counsel Retained by Servicers Pursuant to Duty to Indemnify Fannie Mae
- Law Firm Suspensions, Matter Transfers, and Terminations
- Materials to Assist Servicers with Implementation

Effective Date

Except where specifically stated, until referrals begin under the new requirements contained in this Announcement, all of the existing provisions of the *Servicing Guide* remain applicable, including the requirement that law firms on the *Fannie Mae-Retained Attorney Network* list be utilized for foreclosure and bankruptcy referrals if the security property is located in a jurisdiction in which Fannie Mae has identified retained attorneys.

By June 1, 2013 (the Effective Date), all servicers must have selected and retained law firms to handle Fannie Mae matters in all jurisdictions in which the servicer has, or anticipates having, delinquent Fannie Mae mortgage loans. In order to have law firms selected and retained by the Effective Date, servicers should immediately begin to implement a process for compliance with this Announcement. Fannie Mae may deny reimbursement of fees and out-of-pocket expenses for any referrals after the Effective Date to law firms that have not been selected and retained under the requirements set forth in this Announcement.

Fannie Mae will accept and respond to servicer recommendations of law firms beginning March 1, 2013. Fannie Mae will begin conducting new firm training in April 2013. For law firms that are not currently in the existing retained attorney network, once the law firm has completed its Fannie Mae new firm training and the limited retention agreement with Fannie Mae has been fully executed, the servicer that submitted the *Servicer Selection Form* (discussed in greater detail in the Law Firm Selection and Retention section below) may refer matters to the firm.

Law firms that are currently in the retained attorney network are not exempt from the new selection and retention processes set forth in this Announcement. In order to receive new referrals from servicers on and after the Effective Date, all firms that are currently in the retained attorney network must be selected, trained, and retained pursuant to this Announcement. All referrals by servicers prior to the Effective Date to firms that are currently in the retained attorney network will be considered matters referred under the existing structure and will be governed by the existing engagement letter between the firms and Fannie Mae.

Matters referred to firms in the retained attorney network under the existing structure (Legacy Matters) may remain with those firms. At their own expense, servicers may transfer Legacy Matters to firms retained pursuant to this Announcement, but must provide Fannie Mae with five business days' prior written notice via email to default_attorney@fanniemae.com. Following any transfer of Legacy Matters, the servicer will be responsible for any errors, omissions, or delays by the transferee firm. If a servicer elects to leave Legacy Matters at a firm that it does not select and retain pursuant to this Announcement, the servicer is responsible for managing and overseeing the firm's performance and compliance in accordance with the requirements of this Announcement.

Law Firm Selection and Retention

Under the new requirements, Fannie Mae will no longer maintain a list of retained attorneys to provide default-related legal services for mortgage loans owned or securitized by Fannie Mae. Instead, for all jurisdictions, servicers will be responsible for selecting qualified, experienced law firms to handle default-related legal services relating to Fannie Mae mortgage loans. Fannie Mae will continue to retain counsel directly for legal services relating to Fannie Mae real estate owned (REO).

Servicers are reminded that, pursuant to *Servicing Guide* Announcement SVC-2012-13, *Housing and Economic Recovery Act (HERA) Reporting Requirements,* they must be aware of, and in full compliance with, the Housing and Economic Recovery Act of 2008 (HERA), which requires Fannie Mae to promote diversity to the maximum extent possible in balance with financially safe and sound business practices through:

- the inclusion and utilization of minorities, women, and individuals with disabilities; and
- the use of minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind.

The servicer must commit to practice the principles of equal employment opportunity and non-discrimination in all its business activities.

The selection and engagement process for each law firm providing default-related legal services involves the following four major steps:

- the servicer obtains data from the firm it wishes to retain and conducts appropriate due diligence to determine whether the firm meets Fannie Mae's minimum requirements;
- the servicer submits a *Servicer Selection Form* (Form 200) to Fannie Mae to enable Fannie Mae to determine whether it has an objection with respect to the law firm's retention;
- the firm completes Fannie Mae's new firm training; and
- the firm and Fannie Mae execute a limited retention agreement.

Due Diligence

As part of the selection and retention process, the servicer must collect data from the law firm and conduct appropriate due diligence to evaluate whether the firm meets Fannie Mae's minimum requirements, which are set forth in Attachment to this Announcement. Some of the minimum requirements are objective; others are more subjective and require the exercise of sound judgment by the servicer, taking into account the particular facts and circumstances of each situation. A servicer must maintain documentation evidencing its firm selection process, including how firms are solicited, evaluated, and selected.

If a servicer concludes that a firm does not meet the minimum requirements, the firm cannot move forward in the selection and retention process and the servicer must inform the firm that it has not been selected. Similarly, if a servicer finds that a firm meets the minimum requirements, but decides, as a result of the due diligence process, that it does not wish to retain the firm, the servicer must inform the firm that it has not been selected. A servicer is not obligated to inform Fannie Mae:

- if the servicer determines that a firm does not meet the minimum requirements, or
- if the servicer decides not to retain a firm.

Servicers must submit a Form 200 to Fannie Mae for each law firm that the servicer wishes to retain to provide default-related legal services with respect to Fannie Mae mortgage loans. The *Servicer Selection Form* contains certifications by the servicer regarding the law firm's satisfaction of the minimum requirements and certain required disclosures.

The method by which Form 200 should be submitted to Fannie Mae will be provided at a later date. Form 200 will be available on Fannie Mae's website.

If a firm practices in multiple jurisdictions, the servicer must submit a Form 200 for each jurisdiction for which the servicer wishes to retain the firm.

The servicer must retain all information submitted by a firm in support of the firm's application and all information otherwise gathered by the servicer regarding the firm and make that information available to Fannie Mae upon request. Information relating to firms that are selected and retained by the servicer must be maintained as long as the firm is providing legal services with respect to Fannie Mae mortgage loans and, thereafter, for the longer of any retention period applicable to the servicer or seven years. Information relating to firms that are not selected and retained by the servicer must be maintained for the longer of any retention period applicable to the servicer or seven years.

Fannie Mae No Objection

Fannie Mae will issue either a "No Objection" determination or an "Objection" determination for each submitted *Servicer Selection Form.* Fannie Mae expects that it will be in a position, within 15 business days following the submission of a *Servicer Selection Form*, to make the determination or, if necessary, to request additional information. If Fannie Mae requests additional information from the servicer as part of this process, the servicer must provide the requested information.

If Fannie Mae issues an "Objection" determination, the servicer must not retain the law firm to handle Fannie Mae matters, and the servicer must inform the firm that it was not selected. If Fannie Mae issues a "No Objection" determination, the servicer must inform the law firm that it must attend Fannie Mae new firm training and sign a limited retention agreement with Fannie Mae in order to become eligible to receive referrals of Fannie Mae mortgage loans.

Servicers may not rely upon the fact that another servicer previously submitted a *Servicer Selection Form* with respect to a firm and received a "No Objection" determination. Each servicer must conduct its own due diligence, submit a *Servicer Selection Form*, and receive a "No Objection" determination for each firm the servicer wishes to retain to provide default-related legal services for Fannie Mae mortgage loans.

New Firm Training

The Fannie Mae new firm training will focus on issues relating to the status of Fannie Mae as a government-sponsored enterprise, Fannie Mae's role in the secondary mortgage market, the Fannie Mae *Servicing Guide*, legal issues that have arisen in connection with Fannie Mae matters, and the duties of counsel with respect to reporting to Fannie Mae and handling non-routine litigation. Law firms only have to attend Fannie Mae new firm training once, regardless of the number of servicers that select and retain the firm.

Limited Retention Agreement

The limited retention agreement will recognize and reflect a joint attorney-client relationship between the law firm, Fannie Mae, and the servicer. The limited retention agreement will also provide that it controls in the event that there are any inconsistent provisions in any agreement between the law firm and the servicer. Servicers will be able to access the form of the limited retention agreement for each jurisdiction by logging in to the password-protected portion of Fannie Mae's website. Fannie Mae considers the form of the limited retention agreements to be confidential and proprietary information, and servicers must treat the forms consistent with that classification.

Law Firm Management and Oversight

Referrals

All referrals of Fannie Mae mortgage loans for default-related legal services on and after the Effective Date must be to law firms selected and retained under the requirements set forth in this Announcement. In order for

a law firm to be eligible to receive referrals, the servicer must have submitted a *Servicer Selection Form* to Fannie Mae and have received a "No Objection" determination from Fannie Mae, and the firm must have completed Fannie Mae new firm training and signed a limited retention agreement with Fannie Mae.

Fannie Mae currently permits servicers to refer Fannie Mae mortgage loans directly to trustees for foreclosure in certain jurisdictions. On and after the Effective Date, direct referrals of Fannie Mae mortgage loans to trustees for foreclosure are not permitted in any jurisdiction.

In order to mitigate risk arising from the concentration of legal work related to Fannie Mae mortgage loans, servicers must select and retain an appropriate number of firms for each jurisdiction. The appropriate number of firms for a given jurisdiction will depend on a number of factors, including whether the jurisdiction is a judicial or non-judicial foreclosure jurisdiction, the length of the foreclosure timeline in the jurisdiction, and the existing and anticipated volume of default-related legal matters in the jurisdiction. Servicers must develop procedures to manage exposure to the concentration of legal work.

As outlined in Announcement SVC-2011-22, *Documentation Requirements for Foreclosure and Bankruptcy Referral Packages,* servicers remain responsible for providing law firms with complete referral packages for both foreclosure and bankruptcy referrals and for providing any additional information or documents no later than three business days after they are requested.

In all cases, following a foreclosure referral, the servicer will continue to be responsible for

- pursuing foreclosure prevention efforts;
- providing bidding instructions;
- keeping the attorney apprised about the status of any workout proposals, bankruptcy filings, or other events that affect the foreclosure process;
- providing any additional documentation, information, or signatures to the attorney as needed;
- advancing funds to pay attorney fees and costs;
- filing applicable IRS forms related to paying attorney fees;
- monitoring timeline performance; and
- fulfilling all of its other servicing obligations.

Servicers may not enter into or participate in any arrangements with an outsourcing company or third-party vendor pursuant to which the servicer receives a direct or indirect benefit of any kind (for example, a lower charge for services or a payment) for referring a foreclosure or bankruptcy matter relating to a Fannie Mae mortgage loan to a particular attorney. Outsourcing companies or third-party vendors must not be permitted to directly or indirectly select (or influence the selection of) the attorneys to be used on Fannie Mae mortgage loans.

Servicers are responsible for ensuring that they, their affiliates, and any outsourcing companies or other third-party vendors utilized by the servicer to assist in servicing defaulted mortgage loans comply with the following:

- Fannie Mae's prohibitions against law firms paying outsourcing fees, referral fees, packaging fees, or similar fees (*Servicing Guide,* Part VII, Section 501.03.02: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees, and Part VIII, Section 106.06: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees);
- Fannie Mae's prohibitions against servicers or any outsourcing firm or third-party vendors utilized by the servicer charging law firms technology or electronic invoicing fees (*Servicing Guide,* Part VII, Section 501.03.03: Technology Fees and Electronic Invoicing, and Part VIII, Section 106.07: Technology Fees and Electronic Invoicing); and
- Fannie Mae's prohibitions against servicer-specified vendors for Fannie Mae referrals (*Servicing Guide,* Part VII, Section 501.03.01: Prohibition Against Servicer-Specified Vendors for Fannie Mae

Referrals, and Part VIII, Section 106.05: Prohibition Against Servicer-Specified Vendors for Fannie Mae Referrals).

The authorization contained in Part VII, Section 501.03.02: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees, and Part VIII, Section 106.06: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees, for servicers to refer mortgage loans to affiliated trustees in certain jurisdictions is revoked.

In the *Servicing Guide,* Part VIII, Section 106.04: Attorney (or Trustee) Fees, Fannie Mae has outlined the services that are typically required to be performed by counsel to prosecute judicial and non-judicial foreclosures. Servicers must not require (or permit their affiliates or any outsourcing companies or other third-party vendors utilized by the servicer to assist in servicing defaulted mortgage loans to require) law firms to perform additional services for no compensation. Servicers must manage referrals to law firms to avoid any conflicts of interest on the part of the law firm with respect to Fannie Mae and the servicer.

In all cases, servicers must advise the law firm to which a referral is made that Fannie Mae owns or securitizes the mortgage loan being referred.

The law firm to which a foreclosure referral is made must handle any subsequent bankruptcy case, unless the bankruptcy case is filed in a different jurisdiction and the servicer has not selected and retained the firm pursuant to the terms of this Announcement to perform legal services in the jurisdiction in which the bankruptcy case is filed. In those cases, the bankruptcy case must be handled by a law firm selected and retained by the servicer pursuant to the terms of this Announcement in the jurisdiction in which the bankruptcy case was filed. When the bankruptcy case is resolved, the matter must be referred back to the firm that originally received the foreclosure referral if foreclosure is still necessary (assuming that firm's retention has not been terminated and no suspension of new referrals is in place).

When the servicer becomes aware of a bankruptcy filing in connection with a mortgage loan that has already been referred to a law firm for foreclosure, the servicer must notify the law firm within one business day of learning of the bankruptcy filing.

The requirements contained in the *Servicing Guide,* Part VII, Section 502.03: Referring Case to Bankruptcy Attorney, remain in full force and effect, except that after the Effective Date, bankruptcy cases involving mortgage loans previously referred for foreclosure must be made to a law firm selected and retained pursuant to this Announcement. If the law firm that received the foreclosure referral was a member of the Fannie Mae retained attorney network when it received the foreclosure referral and the firm is selected and retained by the servicer pursuant to this Announcement, the firm must receive the bankruptcy referral (assuming that firm's retention has not been terminated and no suspension of new referrals is in place).

Law Firm Performance Management and Compliance Oversight

The servicer is fully responsible for managing and overseeing all aspects of the performance and compliance of any law firm to which it makes a referral, including foreclosure prevention activities and timeline performance. The servicer must interact with the law firm as necessary throughout the course of the foreclosure or bankruptcy proceedings in order to ensure that the matters are completed in a timely manner, in accordance with applicable law, and in accordance with the requirements of the *Servicing Guide*, including the requirement that the servicer timely deliver good and marketable title to Fannie Mae following a foreclosure. Key expected servicer/attorney interactions are outlined for both foreclosure and bankruptcy matters in Announcement SVC-2011-22, *Documentation Requirements for Foreclosure and Bankruptcy Referral Packages;* Part VII, Chapter 5, Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents; and Part VIII, Chapter 1, Exhibit 2: Expected Servicer/Attorney (or Trustee) Interaction. The servicer must obtain, review, and analyze data and reports from the law firms and take appropriate action as necessary. The servicer is accountable and responsible to Fannie Mae for any delays or losses resulting from deficiencies in the law firm's performance. The servicer must reimburse Fannie Mae for any losses suffered because a law firm did not meet its responsibilities.

The existing *Servicing Guide* provision regarding delays in the bankruptcy process, (found in Part VII, Section 502.12: Delays in the Bankruptcy Process) remains in full force and effect, except that the servicer will be responsible and accountable for any timeline delays attributable to the bankruptcy attorney.

Policies and Procedures

The servicer must develop and have in place policies and procedures regarding oversight and compliance relating to firms handling Fannie Mae default-related matters. The servicer must have policies and procedures reasonably designed to ensure that firms handling Fannie Mae matters are in compliance with the limited retention agreement with Fannie Mae, the applicable provisions of the *Servicing Guide*, and applicable law.

The servicer's ongoing compliance monitoring must address the following minimum elements:

- ongoing eligibility under Fannie Mae minimum requirements;
- compliance with the limited retention agreement with Fannie Mae, including the fee and cost guidelines;
- compliance with the applicable provisions of the *Servicing Guide*;
- compliance with applicable law;
- firm capacity;
- reputational risk issues, for example, complaints against the firm, bar complaints, sanction proceedings, or investigations by regulatory or law enforcement authorities;
- verification that the firm has effective controls in place related to information security, data management, and fraud prevention;
- document custody practices;
- business continuity;
- maintenance of appropriate errors and omissions coverage;
- financial viability;
- adequacy of staffing;
- applicable ratios (attorney to staff; attorney to file, and staff to file) and the firm's management of the ratios;
- training; and
- quality of work.

The servicer must conduct periodic firm compliance reviews and training as appropriate. In determining the frequency of firm compliance reviews, the servicer must consider the overall risk posed by the firm (legal, reputational, and financial), firm volume, performance, any changes in staffing ratios or levels, any litigation against the firm alleging systemic issues, any media coverage regarding the firm, and the prior results of any firm compliance reviews.

The servicer must make available to Fannie Mae upon request the materials relating to its performance and compliance monitoring of law firms providing default-related legal services, including:

- information regarding the servicer's compliance monitoring, including scope and methodology;
- the schedule of firm compliance reviews conducted;
- the identity of any vendors used in the firm compliance reviews;
- any documentation from the firm compliance reviews; and

- any findings, reports or remediation plans resulting from the firm compliance reviews.

Fannie Mae reserves the right to review the servicer's compliance process. Fannie Mae may require servicers to conduct additional compliance activities related to firms handling its default-related matters, such as additional firm compliance reviews. In addition, Fannie Mae may require a servicer to change the scope of its compliance process in connection with Fannie Mae mortgage loans. Fannie Mae also reserves the right to directly conduct firm audits and firm on-site visits as Fannie Mae deems necessary. Fannie Mae audits and visits will focus on items such as fee and cost compliance, servicer compliance with Fannie Mae requirements, and high-risk issues, including legal compliance and reputational risk, unsatisfactory results of servicer firm compliance reviews, and conflicts of interests involving Fannie Mae mortgage loans.

Ongoing Training

The servicer is responsible for ensuring that firms receive any necessary training, including information regarding Fannie Mae requirements, such as *Servicing Guide* announcements that may affect the firms. Although Fannie Mae may conduct mandatory firm training from time to time, the servicer remains responsible for ensuring that firms are aware of Fannie Mae's requirements.

Reporting

The servicer must generate and provide data and reports requested by Fannie Mae on a timely basis. Fannie Mae will require data related to, among other things, servicer performance in managing the foreclosure and bankruptcy processes and oversight of firm performance and compliance. Servicers must provide Fannie Mae access, as requested, to data in its servicing systems regarding Fannie Mae mortgage loans. Fannie Mae will specify from time to time the data and reports required on Fannie Mae's website.

Escalations of Firm and Servicer Issues and Governmental and Media Inquiries

Within two business days of discovery, or sooner if circumstances warrant, the servicer must notify Fannie Mae of matters requiring Fannie Mae's attention, including the following:

- any information regarding a firm that might warrant a suspension of referrals, the transfer of matters to another law firm, and/or termination of the firm;
- information suggesting legal or reputational risk posed by a firm, for example, bar complaints, sanction proceedings, or litigation asserting systemic issues with the firm or its practices;
- any actual or suspected data security breach involving the firm;
- any actual or alleged fraud on the part of a firm;
- federal, state, or local governmental inquiries, including Congressional inquiries, regarding a law firm, Fannie Mae mortgage loans, or Fannie Mae or servicer practices affecting Fannie Mae mortgage loans;
- media inquiries relating in any way to Fannie Mae, a firm, or Fannie Mae mortgage loans;
- volume or capacity issues with a firm;
- a breach of the limited retention agreement between Fannie Mae and a firm;
- any systemic issues with a firm;
- significant issues with the servicer's process for handling delinquent mortgage loans, for example, an issue that causes widespread foreclosure delays or an issue that requires remediation efforts be taken with respect to mortgage loans in one or more jurisdictions; or

- any material change in the ownership, partnership, or organization of the firm after executing the limited retention agreement, including instances where a named partner leaves the firm or a practice group separates from the firm.

Escalation Process

Escalated matters must be reported to Fannie Mae via email at default_attorney@fanniemae.com. Servicers may engage Fannie Mae through their National Servicing Organization points of contact, but in all cases, notice must also be provided to this email address within two business days of discovery, or sooner if circumstances warrant.

When a servicer provides Fannie Mae notice of a matter requiring Fannie Mae's attention, the servicer must designate in its email one or more points of contact. Fannie Mae may request that the servicer obtain additional information from the law firm regarding the matter escalated to Fannie Mae. In such circumstances, the servicer must promptly obtain the requested information from the firm and provide it to Fannie Mae. Fannie Mae reserves the right to issue direction to servicers and firms regarding escalated matters.

Notices of Liens or Legal Actions

Servicing Guide, Part III, Chapter 5: Notices of Liens and Legal Actions

Fannie Mae is revising its guidance with respect to legal action notice requirements in order to more precisely define the types of matters that must be reported to Fannie Mae and specify the time periods for reporting non-routine litigation to Fannie Mae. Fannie Mae reserves the right to direct and control all litigation involving a Fannie Mae mortgage loan, and the servicer and any law firm handling the litigation must cooperate fully with Fannie Mae in the prosecution, defense, or handling of the matter.

Currently, the servicer is required to give Fannie Mae immediate notice of *any* legal or financial action affecting the property or the borrower's ability to repay the debt. Fannie Mae is revising this guidance to require the servicer to notify Fannie Mae of non-routine litigation and certain matters requiring escalation as further detailed in this Announcement. Servicers are reminded that they must fulfill other reporting obligations as outlined in applicable sections throughout the *Servicing Guide*.

Routine Legal Actions Affecting the Loan

Servicing Guide, Part III, Section 501: Uncontested Routine Legal Actions is replaced in its entirety with the following:

From time to time, servicers may be served with a summons and complaint relating to a legal action affecting a Fannie Mae mortgage loan, for example, a condemnation action, a probate proceeding, a partition action, a quiet title action, a code violation notice, a tax sale, or a subordinate loan foreclosure. This section addresses the servicer's responsibilities with respect to these types of legal actions. The servicer is responsible for handling these types of legal actions, including retaining any legal counsel necessary to represent Fannie Mae's interests.

The servicer is also responsible for providing to Fannie Mae any notices required under the *Servicing Guide*, including any notices required by the sections of this Announcement entitled "Escalations of Firm and Servicer Issues and Government and Media Inquiries" and "Routine and Non-Routine Litigation."

If the legal action does not involve allegations that would trigger Fannie Mae's right to indemnification from the servicer, the servicer must use counsel selected and retained pursuant to this Announcement and must have that firm seek and obtain excess fee approval from Fannie Mae's National Servicing Organization for the matter. If a legal action involves allegations that would trigger Fannie Mae's right to indemnification from the servicer (for example, allegations of origination issues or servicing errors), the servicer may retain any counsel of its choice and must pay the firm all necessary fees and costs.

In instances in which the deed of trust or mortgage loan provides for the borrower to reimburse any legal service fees and costs incurred by the servicer, the servicer should instruct its counsel to notify the borrower about his or her responsibility for such expenses. The servicer's legal counsel should attempt to handle such matters by stipulation or any other expeditious manner that will reduce the fees and costs that the borrower has to pay.

Legal Actions Initiated by the Servicer

Servicing Guide, Part III, Section 502: Contested Routine Legal Actions, and Section 503: Nonroutine Legal Actions, are replaced in their entirety with the following:

A servicer may not initiate legal actions on Fannie Mae's behalf or intervene in legal actions on Fannie Mae's behalf, other than for routine foreclosures, bankruptcy matters, and possessory actions for certain mortgage loans (as provided for in Part VIII, Chapter 1: Foreclosures), unless it obtains prior written approval from the Fannie Mae legal department. This will enable Fannie Mae to concur in the necessity of the action and selection of the legal counsel. Excess fee approval must also be obtained from Fannie Mae's National Servicing Organization.

Fannie Mae must be described in legal proceedings as "Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existing under the laws of the United States of America." Fannie Mae may not be referred to as a government agency.

Routine and Non-Routine Litigation

Servicing Guide, Part VIII, Section 101: Routine vs. Non-Routine Litigation is replaced in its entirety with the following:

Servicers are responsible for appropriately handling legal matters affecting Fannie Mae mortgage loans. A servicer, however, must notify Fannie Mae of any non-routine litigation or ensure that a law firm it is utilizing provides the notification. Fannie Mae reserves the right to direct and control all litigation involving a Fannie Mae mortgage loan, and the servicer and any law firm handling the litigation must cooperate fully with Fannie Mae in the prosecution, defense, or handling of the matter. Servicers and any law firms handling non-routine litigation must periodically update Fannie Mae on the progress of non-routine litigation as necessary and appropriate and provide Fannie Mae with sufficient opportunity in advance of any deadline or due date to review and comment upon proposed substantive pleadings, including motions, responses, replies, and briefs.

"Non-routine" litigation generally consists of an action that, regardless of whether Fannie Mae is a party to the proceeding:

- seeks monetary damages against Fannie Mae, its officers, directors, or employees;
- challenges the validity, priority, or enforceability of a Fannie Mae mortgage loan or seeks to impair Fannie Mae's interest in an REO and the handling of which is not otherwise addressed in the *Servicing Guide*; or
- presents an issue that may pose a significant legal or reputational risk to Fannie Mae.

Not all contested matters constitute non-routine litigation. A contested foreclosure action in which the borrower alleges a case-specific procedural or technical defect in the foreclosure is not non-routine litigation and need not be reported to Fannie Mae. Similarly, a contested foreclosure action in which the borrower alleges a case-specific payment application claim is not non-routine litigation and need not be reported to Fannie Mae. In contrast, a contested foreclosure or bankruptcy action in which a borrower challenges the servicer's ability to conduct a foreclosure or seek relief from stay based on a legal argument, which if upheld, could have broader application to other Fannie Mae mortgage loans is non-routine litigation because of the potential for negative legal precedent which could have an impact beyond the immediate case.

In order to assist servicers in identifying non-routine litigation, Fannie Mae provides the following examples of matters that fit into the three categories identified above and must be reported to Fannie Mae as non-routine litigation. These examples are not intended to be exhaustive. Given the evolving nature of default-related litigation, it is not possible to provide an exhaustive list.

- Actions that seek monetary relief against Fannie Mae include any claim (including counterclaims, cross-claims, or third party claims in foreclosure or bankruptcy actions) for damages against Fannie Mae or its officers, directors, or employees.
- Actions that challenge the validity, priority, or enforceability of a Fannie Mae mortgage loan or seek to impair Fannie Mae's interest in an REO include, by way of example:
    - an action seeking to demolish a property as a result of a code violation;
    - an action seeking to avoid a lien based on a failure to comply with a law or regulation;
    - an attempt by a junior lienholder to assert priority over Fannie Mae's lien or extinguish Fannie Mae's interests;
    - a quiet title action seeking to declare Fannie Mae's lien void; and
    - an attempt by a borrower to effect a cramdown of a mortgage in bankruptcy as to which Fannie Mae has not delegated authority to the servicer or law firm to address.
- Actions that present an issue that may pose significant legal or reputational risk to Fannie Mae include, by way of example:
    - any issue involving Fannie Mae's conservatorship, its conservator (FHFA), Fannie Mae's status as a federal instrumentality, or an interpretation of Fannie Mae's charter;
    - any contention that Fannie Mae is a federal agency or otherwise part of the United States Government;
    - any "due process" or other constitutional challenge;
    - any challenge to the methods by which Fannie Mae does business;
    - any putative class actions involving a Fannie Mae mortgage loan;
    - a challenge to the standing of the servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case;
    - challenges to the methods by which MERS does business or its ability to act as nominee under a mortgage;
    - any "show cause orders" or motions for sanctions relating to a Fannie Mae mortgage loan, whether against Fannie Mae, the servicer, a law firm, or a vendor of the servicer or law firm;
    - foreclosures on Indian tribal lands;
    - any environmental litigation relating to a Fannie Mae mortgage loan;
    - a need to foreclose judicially in a state where non-judicial foreclosures predominate;
    - any claim invoking HAMP as a basis to challenge a foreclosure;
    - cross-border insolvency proceedings under Chapter 15 of the Bankruptcy Code;
    - any claim of predatory lending or discrimination in mortgage loan origination or servicing; and
    - any claim implicating the interpretation of the terms of the Fannie Mae/Freddie Mac Uniform Mortgage Instruments.

A servicer must obtain Fannie Mae's prior written approval before appealing or otherwise challenging a judgment in any foreclosure or bankruptcy proceeding. A servicer must also notify Fannie Mae if a borrower files an appeal or seeks other post-judgment relief in any foreclosure or bankruptcy proceeding.

A servicer must obtain Fannie Mae's prior written approval before removing a case to federal court based on Fannie Mae's charter.

Non-routine litigation must be reported to Fannie Mae via email to nonroutine_litigation@fanniemae.com. Servicers must monitor all routine foreclosure and bankruptcy matters and timely notify Fannie Mae if a routine legal action becomes non-routine litigation.

Non-routine litigation must be reported to Fannie Mae within two business days, except with respect to the following three categories of loan-level challenges:

- a challenge to the standing of the servicer to conduct foreclosures or bankruptcies which, if successful, could create negative legal precedent with an impact beyond the immediate case;
- challenges to the methods by which MERS does business or its ability to act as nominee under a mortgage; or
- any claim invoking HAMP as a basis to challenge a foreclosure.

With respect to these three categories of loan-level challenges, Fannie Mae need not be notified until:

- the borrower seeks summary judgment on such a challenge,
- briefing is required in response to such a challenge, or
- the challenge is anticipated to occur at a scheduled trial.

Servicers are reminded that, as provided in *Servicing Guide* Announcement SVC-2012-12, *Miscellaneous Servicing Policy Changes*, Rule 14 of the MERS System Rules of Membership imposes notification requirements concerning "Legal Filings" that raise certain MERS-related challenges. The servicer is responsible for ensuring that any notification required under MERS Rule 14 is provided to MERSCORP Holdings, Inc, and immediately to Fannie Mae via email to nonroutine_litigation@fanniemae.com.

Effect of Environmental Hazards

Servicing Guide, Part VIII, Section 103.02: Effect of Environmental Hazards

Fannie Mae currently requires the servicer to notify Fannie Mae of environmental litigation in which Fannie Mae is a party. Effective immediately, the servicer must notify Fannie Mae of any environmental litigation affecting a Fannie Mae mortgage loan or property, regardless of whether Fannie Mae is a party.

Foreclosure and Bankruptcy Attorney Fees

Servicing Guide, Part VII, Section 501.03: Bankruptcy Attorney Fees; Part VIII, Section 106.04: Foreclosure Attorney Fees

For referrals made pursuant to this Announcement, including both those made prior to the Effective Date to firms that are not currently in the existing retained attorney network and those made after the Effective Date, references to "Fannie Mae-retained attorneys," "servicer-retained attorneys," and "trustee fees" are removed. Attorneys providing default-related legal services are referred to simply as "attorneys."

Servicers are reminded that all attorneys must continue to submit their statements for all fees and expenses directly to the servicer. Servicers are also reminded that they are responsible for reviewing and approving the attorneys' fees for services rendered (as well as all related expenses) and for seeking reimbursement from Fannie Mae. Before requesting that Fannie Mae reimburse the servicer for amounts paid to an attorney, the servicer must review and approve the attorneys' fees and costs to ensure that they are in compliance with Fannie Mae's guidelines. Servicers must also continue to ensure that fees and expenses charged to the borrower are permitted under the terms of the note, security instrument, and applicable law and are prorated to reasonably relate to the amount of work actually performed. Servicers must have appropriate policies, procedures, and controls to ensure compliance with Fannie Mae's requirements, and Fannie Mae will monitor the effectiveness of the servicers' policies, procedures, and controls.

This Announcement revises Part VIII, Section 106.04: Attorney (or Trustee) Fees, of the *Servicing Guide* as follows:

- clarifies that the maximum allowable foreclosure fee (for both judicial and non-judicial foreclosures) is intended to cover attendance by foreclosure counsel at the foreclosure sale, when required;
- reminds servicers that routine motions for default or summary judgment in foreclosure proceedings are included in the maximum allowable foreclosure fee;
- removes "conducting a closing to complete a sale to a third-party bidder" from the list of "events which may require additional legal services";
- extends the guidance pertaining to prorated attorney fees when a foreclosure is stopped due to a borrower filing for bankruptcy to also apply to situations where the foreclosure is stopped as a result of the implementation of a foreclosure prevention alternative; and
- clarifies that the full attorneys' fee cannot be considered to be earned until all of the steps necessary to complete the foreclosure and vest title in Fannie Mae, including any post-sale confirmation or ratification proceedings, have been completed.

Servicers are reminded that Fannie Mae will only reimburse a servicer for attorney fees that have been prorated to reasonably relate to the amount of legal work actually performed by the attorney. Additional detail on attorney fees can be found in Part VIII, Section 106.04: Attorney (or Trustee) Fees, of the *Servicing Guide*.

Eviction Proceedings

Servicing Guide, Part VIII, Section 109: Eviction Proceedings

In connection with any property for which Fannie Mae has the property disposition responsibility, Fannie Mae will no longer notify the servicer of its selection of an eviction attorney by sending a copy of the referral letter to the servicer. Additionally, this Announcement clarifies that Fannie Mae will base its decision to initiate eviction proceedings on the occupancy status as determined by Fannie Mae's REO listing broker, and not on information the servicer provides in the REOgram®.

Fannie Mae has changed the name of its National Property Disposition Center to "Real Estate Asset Management."

Special Counsel Retained by Servicers Pursuant to Duty to Indemnify Fannie Mae

As set forth in Part I, Section 201.05: Indemnification for Losses, of the *Servicing Guide*, servicers have indemnification obligations to Fannie Mae with respect to, among other things, breaches or alleged breaches of selling warranties or representations, origination or selling activities related to Fannie Mae-owned or Fannie Mae-securitized mortgage loans, or actual or alleged failures to satisfy duties and responsibilities for mortgage loans or MBS pools serviced for Fannie Mae.

From time to time, servicers retain counsel at their own expense to represent Fannie Mae and/or the servicer pursuant to their indemnification obligations to Fannie Mae (Special Counsel). Special Counsel retained and paid by servicers pursuant to their indemnification obligations to Fannie Mae need not be selected and retained pursuant to this Announcement. Servicers must, however, notify Fannie Mae of the retention of Special Counsel and ensure that its Special Counsel keeps Fannie Mae updated on the progress of the matters handled by such firms.

The servicer must also ensure that it or Special Counsel periodically updates the law firm to which the foreclosure, bankruptcy, or eviction matter was originally referred regarding the status of the matter for which Special Counsel was retained. Once any issues for which Special Counsel was retained are resolved, the servicer is responsible for transitioning the foreclosure, bankruptcy, or eviction matter back to the law firm to which it was originally referred for any required further proceedings.

Law Firm Suspensions, Matter Transfers, and Terminations

Servicer-Directed Suspension of Referrals, Matter Transfers, and Terminations

If a servicer becomes aware of information regarding a law firm handling Fannie Mae default-related matters that might warrant a suspension of referrals, the transfer of matters to another law firm, and/or termination of the firm (for example, legal, reputational, or operational risk), the servicer must:

- notify Fannie Mae within two business days or sooner if circumstances warrant as set forth in the Escalations section of this Announcement; and
- conduct due diligence with respect to the issue.

If the servicer intends to suspend referrals, transfer matters, and/or terminate a firm, the servicer must:

- provide Fannie Mae with prior notice at least five business days before implementing the decision;
- provide Fannie Mae with the implementation plan for the course of action chosen by the servicer;
- upon request, provide Fannie Mae with the reason for the decision and the due diligence materials or other information supporting the decision;
- inform the firm of the decision; and
- keep Fannie Mae periodically updated with respect to the status of implementation of the decision.

The servicer must retain all information relating to the due diligence review, the servicer's decision, and all other information supporting the decision for the longer of any retention period applicable to the servicer or seven years after the decision, and the servicer must make such information available to Fannie Mae upon request.

Fannie Mae-Directed Suspension of Referrals, Matter Transfers, and Terminations

Fannie Mae may direct the servicer to initiate an investigation of a law firm if Fannie Mae becomes aware of information that might warrant a suspension of referrals, the transfer of matters, or termination of the firm. Fannie Mae may itself conduct due diligence and investigations as necessary. Fannie Mae may instruct servicers to suspend some or all new referrals, to transfer some or all of its matters, or to terminate law firms.

In the event of a decision by Fannie Mae to suspend new referrals, transfer matters, or terminate a firm, Fannie Mae will:

- inform the servicer of the decision and provide direction with respect to required servicer actions, including direction with respect to matter transfers;
- inform the firm of the decision and provide direction to the firm with respect to required firm actions; and

- terminate the limited retention agreement between Fannie Mae and the firm, as appropriate.

Implementation of Suspension of Referrals, Matter Transfers, and Terminations

Unless otherwise directed by Fannie Mae, the servicer will be responsible for implementing any suspension, transfer of matters, and/or termination. Fannie Mae reserves the right to manage any suspension, transfer of matters, and/or termination if it concludes that Fannie Mae's management is necessary to manage legal, reputational, or operational risks. Servicers must follow all reasonable instructions given by Fannie Mae.

When determining the proper implementation strategy for any suspension, transfer of matters, and/or termination, the servicer must consider all pertinent factors, including:

- the capacity of other eligible law firms in the jurisdiction to handle additional capacity and/or transferred matters;
- proration of fees between the transferor and transferee firms;
- avoiding duplicate fees and costs as a result of any transfer; and
- the continuing availability of adequate errors and omissions coverage for a firm as to which some matters are left for resolution following a suspension of referrals or partial transfer of matters.

With respect to any required matter transfer, the servicer must take all required steps to effectuate, manage, and monitor the transfer and report periodically to Fannie Mae regarding:

- the identity of each transferee firm;
- identification and quantification of the matters transferred to each transferee firm; and
- the timing and status of the matter transfer.

Servicers may not charge Fannie Mae or borrowers for any fees or costs associated with transferring matters, and such amounts may not be added to borrower mortgage loan balances.

Materials to Assist Servicers with Implementation

Process flows for

- the selection and retention process,
- law firm management and oversight, and
- law firm suspensions, matter transfers, and terminations will be available on Fannie Mae's website.

The process flows are provided as a convenience to servicers and do not in any way alter or vary the requirements of this Announcement. In the event of any inconsistency between the process flows and this Announcement, the terms of this Announcement govern.

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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 on this Announcement.

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

Attachment

Firm Minimum Requirements

	Requirement	Description
1	The law firm's practice areas must include end-to-end default-related and REO-related legal services.	A firm's practice areas must include end-to-end default-related legal services (foreclosure, bankruptcy, loss mitigation (for example, deeds-in-lieu of foreclosure), and related litigation) and REO-related legal services (eviction, REO closing, and related litigation). A firm must ▪ be familiar with industry standards in the jurisdiction in which it practices; ▪ understand the jurisdiction's legal processes and requirements in foreclosure, bankruptcy, eviction, REO closing, and related litigation; and ▪ understand the substantive legal issues in the jurisdiction (for example, standing). Servicers must consider a firm's experience in the following areas: ▪ the Fannie Mae *Servicing Guide*; ▪ dealing with loss mitigation; ▪ foreclosure mediation; ▪ the Fair Debt Collection Practices Act; ▪ title curative issues; and ▪ general housing-related issues (for example, rent control; Section 8; lead paint liability; health code violations; foreclosure redemption, confirmation and ratification; homeowners' associations; mobile home matters; and cooperative loans). Servicers must also give consideration to a firm's membership in default-related and REO-related trade and industry groups, jurisdiction bar event participation, seminar and lecture participation and attendance, and any other activities relevant to mortgage default and REO law practice.

	Requirement	Description
2	With certain limited exceptions, the law firm must have a staffed office located in the jurisdiction for which it is retained.	A firm must have an appropriately staffed office located in the jurisdiction in which the firm is retained, except in the following circumstances: ▪ Special rules apply for the jurisdictions of Alaska, District of Columbia, Idaho, New Hampshire, Rhode Island, Montana, West Virginia, and Wyoming. In those jurisdictions, servicers should give preference to firms that have staffed offices in those jurisdictions, but out-of-jurisdiction firms may be used to handle default-related matters, provided they are located in the same region of the country and are able to demonstrate that they have policies, procedures, and processes in place to handle cases from outside the jurisdiction. ▪ Servicers may use firms outside the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa to handle default-related matters in those Territories. Servicers should give preference to firms that have staffed offices in the Territory, but out-of-jurisdiction firms may be used, provided that they are able to demonstrate that they have policies, procedures, and processes in place to handle cases from outside the Territory. If a servicer has difficulty finding a sufficient number of firms with appropriately staffed offices in jurisdictions other than those listed in the exceptions above, the servicer may contact Fannie Mae to request an exception to the requirement that a firm have an appropriately staffed office located in the jurisdiction. Requests should be emailed to default_attorney@fanniemae.com. A firm must be registered, as necessary, with the appropriate jurisdictional authorities. The servicer must obtain office addresses for each firm it seeks to retain. Additionally, the servicer must require the firm to disclose where the staff handling the work in the particular jurisdiction is located, and to whom the staff in that office regularly reports. For the jurisdictions in which an appropriately staffed office is required, the firm must disclose the extent, if any, to which work will be performed by an office of the firm in another jurisdiction.
3	The law firm must provide two jurisdiction-specific industry references.	A firm must provide the servicer with at least two jurisdiction-specific servicer or default-related references, or, if the firm has been in existence less than one year, the partners or shareholders of the firm must provide at least two servicer or default-related references in connection with work performed in the particular jurisdiction.

	Requirement	Description
4	The law firm must have the ability to handle default-related and REO-related legal matters throughout the jurisdiction.	A firm must have the ability to handle foreclosures, bankruptcies, evictions, REO closings, and related litigation throughout the jurisdiction. If a firm has partnerships or relationships with third parties (for example,, local counsel, trustee companies, or title companies) that will perform or complete some aspect of the default-related and REO-related work, the firm must ▪ disclose such relationships and the extent to which third parties will be relied upon, and ▪ have a reasonable contingency plan for the loss of any of those relationships or operational processes. In evaluating any such third-party relationship, the servicer must consider the length of time the relationship has existed and the adequacy of the firm's written policies to mitigate third-party risk. If a firm uses local counsel to handle matters within the jurisdiction, the firm must have a process to select, manage, and review the local counsel and their work product. The process must be designed to ensure that local attorneys are qualified and adequately trained and have a satisfactory history with respect to bar complaints, sanctions, and similar matters. For a firm's contested caseload (for example, contested foreclosures and litigated cases), the firm's reliance on local counsel must be minimal. Any use of local counsel for these matters must be structured so that the retained firm will direct and manage the local counsel on those matters.
5	The law firm must have completed a sufficient volume of default-related and REO-related legal services to demonstrate its experience.	The firm or its managing attorney(s) must have completed a sufficient number of foreclosure, bankruptcy, loss mitigation, eviction, and REO matters within the past 24 months to demonstrate that the firm has experience in representing creditors in default-related and REO-related matters. For the 24-month period, the servicer must review the total number of matters referred, the total number of matters completed, and the number of matters currently pending for each of the following areas: foreclosure, bankruptcy (including proof of claim and motion for relief from stay), loss mitigation, eviction, and REO closing. What constitutes a sufficient number of completed default-related and REO-related legal services will vary depending upon the jurisdiction at issue, the volume the servicer expects to refer to the firm, and the relative size of the firm. Servicers must consider these factors when making this determination.

	Requirement	Description
6	The law firm's partner(s) or managing attorney(s) must have adequate, relevant, overall jurisdiction-specific experience.	A firm must have one or more managing attorney(s) or partner(s) with no less than eight to ten years of relevant, jurisdiction-specific experience in foreclosure (including, where applicable, confirmation, redemption, and ratification matters), bankruptcy, loss mitigation, eviction, REO closing and related litigation. Servicers may make an exception to this requirement for documented reasons in the event a firm is otherwise qualified. The servicer must obtain a list of the names of the firm's managing attorneys, partners and associates with the years of experience in each area (foreclosure, bankruptcy, eviction, REO closing, and related litigation). If the principals or partners of the firm are not actively involved in the management of the firm, the servicer must consider the level of experience of those actively involved in managing the firm.
7	The law firm must have one or more lead attorney(s) for Fannie Mae matters with adequate, relevant litigation experience in the jurisdiction.	A firm must have one or more lead attorney(s) for Fannie Mae matters with at least five years' experience in handling default-related and REO-related litigation in the jurisdiction. The firm's partner(s) or managing attorneys(s) may act as the lead attorney for Fannie Mae matters. If the firm will utilize staff attorneys for Fannie Mae matters, one or more staff attorneys must have at least three years' experience in handling default-related and REO-related litigation in the jurisdiction.
8	The law firm's attorneys must be licensed and in good standing in the jurisdiction in which the firm will be retained.	A firm's attorneys who will handle the work in the jurisdiction must be licensed to practice and be in good standing in the jurisdiction in which the firm will be retained. Legal work must be performed by attorneys licensed in the jurisdiction.
9	The law firm's non-attorney staff must have reasonable experience.	A firm's non-attorney staff must have reasonable experience. In determining what constitutes reasonable experience, the servicer must consider the average years of experience, education, qualifications, and demonstrated ability of the non-attorney staff in relation to their respective levels of responsibility.
10	The law firm must have an appropriate attorney-to-staff ratio to ensure appropriate staff oversight.	A firm must have an appropriate attorney-to-staff ratio to ensure appropriate staff oversight given the size of the firm and the firm's operational structure. In determining what constitutes an appropriate attorney-to-staff ratio, the servicer must consider whether the firm practices in a judicial or non-judicial foreclosure jurisdiction, the firm's case management practices, the jurisdiction-specific process, the experience of the firm's attorneys and staff, the firm's technology, and the firm's infrastructure.

	Requirement	Description
11	The law firm must have appropriate attorney-to-file and staff-to-file ratios to ensure appropriate file oversight.	A firm must have appropriate attorney-to-file and staff-to-file ratios to ensure appropriate file oversight given the size of the firm and the firm's operational structure. In determining what constitutes the appropriate ratios, a servicer must consider whether the firm practices in a judicial or non-judicial foreclosure jurisdiction, the firm's case management practices, the jurisdiction-specific process, the experience of the firm's attorneys and staff, the firm's technology, and the firm's infrastructure.
12	The law firm must have the ability to grow and contract based on market conditions.	As of the date of the submission of the *Servicer Selection Form* (Form 200), the firm must have the ability to accept additional referrals. The firm must not be operating at full capacity given the existing facilities, personnel, and technology or, alternatively, the firm must outline to the servicer's satisfaction the steps and timeframe necessary to be in a position to handle additional referrals while still maintaining appropriate attorney-to-file and staff-to-file ratios. A firm must also have contingency plans to deal with a contraction in the market.
13	The law firm must demonstrate high professional standards.	A firm must demonstrate a history of legal practice that comports with applicable legal and ethical standards, reflecting high professional standards. The servicer must conclude that the firm does not, considering the totality of the circumstances, pose a legal or reputational risk or exhibit systematic issues that may lead to legal or reputational risk. A servicer must obtain the following information from the firm in order to evaluate the sufficiency of the firm's professional standards: Any sanctions against the firm or any of its present or former attorneys in the past five years, including the nature of the sanctions and, if they relate to a loan-level matter or systemic firm practice, any corrective actions taken by the firm; Any bar complaints/reprimands against present or former firm attorneys in the past ten years and whether the complaints were closed, are pending, or resulted in some form of adverse action; Any government investigations involving the firm in the past ten years and whether the investigations involved firm practices or were related to investigations of the firm's client; Any damages or settlement of claims as result of an allegation of professional negligence against the firm or its attorneys in the past five years ▪ in excess of $20,000 in any single occurrence or $50,000 in the aggregate, or ▪ that reflect a possible pattern of professional negligence, regardless of amount; and Any significant litigation asserting systemic issues with firm processes or legal work, such as any class action against the firm.

	Requirement	Description
		If the servicer is aware of any of the above items that involve the firm's professional standards but which were not disclosed by the firm, the servicer must disclose them to Fannie Mae in the *Servicer Selection Form* (Form 200). The servicer must obtain disclosure from the firm regarding whether the firm (or any of its partners, shareholders, or employees while acting as a partner, shareholder, or principal at another firm) has previously been terminated by Fannie Mae or Freddie Mac or had referrals by Fannie Mae or Freddie Mac suspended. The servicer must obtain a certification from the firm that, to the best of the firm's knowledge, the firm's documents have been and continue to be prepared, executed, and notarized in compliance with applicable law. If the firm reports that the firm, its attorneys, notaries, or third parties that the firm relies on to perform any aspect of default-related or REO-related services have previously prepared, executed, or notarized documents that have not been in compliance with applicable law, the servicer must conclude that the firm has instituted controls, procedures, and processes to address the contributing cause(s) of the firm's failure to comply with applicable law in order to execute the *Servicer Selection Form* (Form 200). Fannie Mae expects servicers to exercise sound judgment and consider the totality of the circumstances in evaluating the potential legal and reputational risks posed by a firm. The items for consideration outlined above are not intended to be exhaustive or to disqualify a firm from retention if the servicer concludes that the firm is acceptable considering the totality of the circumstances.
14	The law firm must be able to track, monitor and complete matters within defined timelines.	The servicer must confirm that the firm is able to track, monitor, and complete foreclosure and bankruptcy matters in compliance with applicable law and Fannie Mae timeline requirements, taking into consideration outside factors that impact compliance with Fannie Mae timelines such as new foreclosure requirements and court delays. The servicer must review the firm's completion timelines.
15	The law firm must have the ability to report key data to Fannie Mae.	A firm must have the capability to provide daily reporting to Fannie Mae, including via a web-based attorney reporting system, regarding key metrics (that is, volume, timelines, delays, loss mitigation successes, etc.). The firm must have staff responsible for reporting.

	Requirement	Description
16	The law firm must have the ability to report diversity data.	A firm must have the capability to report diversity data to the servicer and Fannie Mae, if necessary, in accordance with the Housing and Economic Recovery Act. Pursuant to Announcement SVC-2012-13, *Housing and Economic Recovery Act (HERA) Reporting Requirements*. The servicer must provide Fannie Mae with data regarding the diversity status of the servicer, its agents, subcontractors, and vendors, including: appropriate certifications of minority-, women-, and disabled-owned status; reports, as requested, on the number of minorities, women, and individuals with disabilities utilized; and any other information Fannie Mae requests for purposes of complying with HERA or any other diversity and inclusion requirements.
17	The law firm must have adequate technology.	A firm must have technology to provide reporting, communication, and tracking of key events and milestones. A firm must have access to PACER/ECF or other similar systems to obtain case and docket information from federal appellate, district and bankruptcy court records. The firm must be able to provide status reports and track significant dates and events for foreclosure, bankruptcy, evictions, and REO closings. The firm must have the capability to measure duration between various process stages, to identify process impediments (for example, holds), and to parse holds into different categories. If a firm has partnerships or relationships with third parties (for example, local counsel, trustee companies, or title companies) that will perform or complete some aspect of the default-related or REO-related work or if the firm relies on other offices to perform some aspect of the work or provide operational support, the firm must maintain a reliable and secure means of exchanging matter information between each office and any third party the firm relies upon. The servicer must require a firm to describe whether the firm currently uses a universal translation technology to communicate information between their technological system and the various servicers' systems or explain its method for transmitting information efficiently, accurately, and securely to servicers.
18	The law firm must have adequate technical support.	A firm must have in-house technical expertise or readily available vendor technical support.

	Requirement	Description
19	The law firm must have an appropriate amount of errors and omissions insurance coverage.	A firm must have an appropriate amount of errors and omissions insurance coverage. The amount of required insurance coverage depends upon the amount of foreclosure matters the firm is handling or expects to handle for Fannie Mae and Freddie Mac when it is being evaluated by the servicer. A firm retained to handle Fannie Mae matters must have or be able to obtain the following coverage prior to receiving referrals under the new requirements: ▪ Tier I: volume of 0-4,499 foreclosure matters, coverage of not less than $1 million per occurrence with an aggregate of not less than $3 million; ▪ Tier II: volume of 4,500-19,999 foreclosure matters, coverage of not less than $5 million per occurrence with an aggregate of not less than $5 million; and ▪ Tier III: volume of 20,000 or more foreclosure matters, coverage of not less than $8 million per occurrence with an aggregate of not less than $8 million. The required level of insurance is determined by the higher of the Fannie Mae or Freddie Mac pending foreclosure volume. By way of example, if a law firm had 2,000 Fannie Mae foreclosure matters and 4,501 Freddie Mac foreclosure matters, the firm would fall within Tier II and the required coverage would be not less than $5 million per occurrence with an aggregate of not less than $5 million. Beginning in 2014, servicers must conduct an updated coverage analysis annually, with the appropriate level of insurance to be determined by the number of matters being handled as of June 1 of each year. When an annual review reveals a need to increase a law firm's coverage, law firms will have until December 31 of each year to obtain any required increased coverage. Servicers may grant firms additional time to obtain increased coverage if necessary to reach the routine renewal date for the firm's policy, but may not grant extensions beyond June 1 of the following year.
20	The law firm must have adequate financial resources.	A firm must have the financial ability to make required advances in connection with filing fees and costs necessary to process default-related and REO-related matters. The servicer must review the firm's financial statements or other financial documents in order to confirm that the firm has sufficient reserves or credit lines to manage operating expenses.
21	The law firm must have business continuity and/or disaster recovery plans in place.	A firm must have business continuity and/or disaster recovery plans in place to recover critical business functions. A firm must have a documented succession/continuity plan in the event of loss of the firm owner/partners.

	Requirement	Description
22	The law firm must have adequate quality control, supervision of staff, and review of documents.	A firm must have written policies, procedures and/or processes in place by the date of the submission of the *Servicer Selection Form* (Form 200) to ensure the proper management and supervision of staff and the proper preparation, review, execution, and notarization of default-related and REO-related documents. The firm must also have an escalation process for employees to raise document execution and other quality control issues to firm management. The servicer must require the firm to provide information related to the firm's process for ensuring compliance with its policies, procedures, processes and training, such as an internal compliance program and/or quality control reviews.
23	The law firm must provide adequate employee training.	A firm must have written policies for employee training, including privacy training. In determining whether a firm's employee training is adequate, the servicer must consider the frequency of training, the presence of policies and procedures and firm handbooks, manuals, or job aids.
24	The law firm must have adequate controls over information security, data management, and fraud prevention.	A firm must maintain physical, technical, and procedural controls and effective information security and data management to: ▪ ensure the security and confidentiality of personally identifiable information (PII) and confidential information, whether in paper, electronic or other form; ▪ protect against any threats or hazards to the security or integrity of such information; and ▪ protect against unauthorized access to or use of such information. The firm must implement controls meeting or exceeding industry standards, including, as applicable, standards promulgated by the International Office for Standardization (ISO) or National Institute for Standards and Technology (NIST). A firm must ensure that PII that is stored on Firm's systems and workstations is encrypted at rest at all times. A firm must have secured storage for promissory notes and other original documents to prevent theft and to ensure protection against fire, flood or other damage. A firm may not perform, outsource, or send to any affiliate outside of the United States or its territories, any legal work on GSE mortgage loans, including any storage of GSE data. A firm may not send any PII underlying GSE mortgage loans outside the United States. A firm must have written policies, procedures, and processes in place by the date of the submission of the *Servicer Selection Form* (Form 200) related to protection of PII and fraud prevention, including policies, procedures and processes related to: background checks of all employees; protection of PII; fraud prevention and identification; and incident response and notification protocols for data breaches and other security incidents. The servicer must review and confirm that the firm meets these requirements for information security, data management, protection of PII, and fraud prevention.

	Requirement	Description
25	No substantial part of the law firm's practice may include matters that are adverse to financial institutions, including Fannie Mae or Freddie Mac.	No substantial part of a firm's practice may include matters that are adverse to financial institutions, including Fannie Mae or Freddie Mac. Matters adverse to financial institutions include homeowners' association foreclosures, consumer debtor or mortgagor representations, and bankruptcy trustee representations.
26	The servicer must disclose to Fannie Mae any relationships between the servicer and the firm and any relationships between the firm and any outsourcing company utilized by the servicer.	Attorneys handling Fannie Mae matters must not be affected by a conflict of interest. A servicer must retain the most qualified attorneys to handle Fannie Mae matters without regard to arrangements that could provide a financial or personal benefit directly or indirectly to the servicer, its employees, or any outsourcing companies or other third-party vendors utilized by the servicer to assist in servicing defaulted mortgage loans. In the *Servicer Selection Form* (Form 200), the servicer must disclose to Fannie Mae any current, past (within the last five years), or pending personal and/or financial relationships between ▪ the servicer and the law firm, including its partners and shareholders (as applicable) and ▪ the law firm, including its partners and shareholders (as applicable), and any outsourcing company or other third-party vendor utilized by the servicer to assist in servicing defaulted mortgage loans.
27	The law firm must disclose any interest in providers of related services.	The servicer must require a firm to disclose the identity of, and any relationship with, any entities providing third-party support functions, including, but not limited to, title searches, title insurance, posting, publication, and service of process. The servicer must require the firm to disclose whether the firm has a process to select and regularly review costs and performance of vendors to ensure competitive pricing and high quality.

	Requirement	Description
28	The law firm must adhere to Fannie Mae guidelines regarding outsourcing fees, referral fees, technology and electronic invoice fees, and vendor selection.	Fannie Mae's existing prohibitions against law firms paying outsourcing fees, referral fees, packaging fees, or similar fees (Part VII, Section 501.03.02: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees, and Part VIII, Section 106.06: Outsourcing Fees, Referral Fees, Packaging Fees or Similar Fees) remain in full force and effect. Fannie Mae's existing prohibitions against servicers or any outsourcing firm or third party vendors utilized by the servicer charging law firms technology or electronic invoicing fees (Part VII, Section 501.03.03: Technology Fees and Electronic Invoicing, and Part VIII, Section 106.07: Technology Fees and Electronic Invoicing) remain in full force and effect. The servicer must obtain a certification that the firm is not paying these fees on Fannie Mae mortgage loans and will not do so in the future. Fannie Mae's existing prohibitions against servicer-specified vendors for Fannie Mae referrals (Part VII, Section 501.03.01: Prohibition Against Servicer-Specified Vendors for Fannie Mae Referrals, and Part VIII, Section 106.05: Prohibition Against Servicer-Specified Vendors for Fannie Mae Referrals) remain in full force and effect. The servicer must obtain a certification from the firm that its vendor selections are based on factors such as the cost efficiency, quality, reliability, and timeliness of the services provided and are not influenced and will not be influenced by a requirement or encouragement by the servicer to use specified vendors.