



Fannie Mae

2010 Servicing Guide Update

Part VII and Part VIII

April 2010

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April 28, 2010

Preface

This *Servicing Guide Update* consists of *Part VII, Delinquency Management and Default Prevention*, and *Part VIII, Foreclosures, Conveyances and Claims, and Acquired Properties*. *Part VII* discusses servicing functions that pertain to the management of delinquent mortgages or mortgages where the likelihood of default is reasonably foreseeable, and *Part VIII* addresses foreclosure procedural requirements and the servicer's general administrative and property management functions for acquired properties.

This update includes the incorporation of previously issued announcements that have impacted *Parts VII* and *VIII*. In addition, Fannie Mae is adding or updating a number of new policies and procedures. Refer to [SVC-2010-06](#) for details about all of the changes that have been incorporated.

Servicers should follow the instructions in this *Preface* when using the updated 2010 *Parts VII* and *VIII* in conjunction with the 2006 *Servicing Guide*.

Effective Dates for the 2010 Servicing Guide Parts VII and VIII

The effective date for each section is the date that is shown in parenthesis next to each section title. If multiple changes with different effective dates were made to the same section, only the most recent effective date is shown. Generally, although servicers are encouraged to implement the new requirements as soon as possible, they have a mandatory effective date of January 1, 2011.

However, the new requirements regarding Servicing Standards and Collection Procedures (*Part VII, Chapters 1* and *2*) are particularly important and material to Fannie Mae's ongoing efforts to keep borrowers in their homes and to reduce credit losses. Accordingly, servicers must use diligent efforts to implement them as soon as feasible, but in no event later than January 1, 2011. Further, Fannie Mae may direct servicers on an individual basis to implement some or all of the new Servicing Standards and Collection Procedures for all or particular segments of their Fannie Mae portfolios by a specific date in 2010 as Fannie Mae determines to be necessary or appropriate. In the event Fannie Mae directs servicers to

implement the new Servicing Standards and Collection Procedures by a specific date in 2010, servicers must take any additional steps necessary to comply.

Using the 2006 Version of the *Servicing Guide* with the Updated *Parts VII* and *VIII*

For the sections in *Parts VII* and *VIII* that are now effective (effective on or before April 28, 2010), servicers must use the updated *Parts*. For the new or updated policies that are not effective until January 1, 2011, servicers must follow the previous requirements as described in *Part VII* and *VIII* of the 2006 version of the *Guide* (as amended by *Announcements*) until either the earlier of the date implemented by the servicer or the mandatory effective date. In addition, servicers must continue to follow *Parts I – VI, IX – XII* of the 2006 version of the *Servicing Guide* (as amended by *Announcements*).

For ease of use, when viewing the 2006 version of *Parts VII* and *VIII* in AllRegs, servicers will see a link to the 2010 version of the *Part*.

Note: The Table of Contents for *Parts VII* and *VIII* in the 2006 *Servicing Guide* reflects the 2006 version of those *Parts*. Refer to the new Table of Contents for the new organization of the updated *Parts VII* and *VIII*. In addition, links from the 2006 version to *Parts VII* and *VIII* will take the user to the 2006 version of the *Part*.

Access Options

Fannie Mae currently offers the 2005 and 2006 versions of its *Servicing Guide*, related *Announcements* and *Lender Letters*, and the updated *Parts VII* and *VIII* through a variety of mediums, including:

- using a free electronic version on the AllRegs Web site through a link from eFannieMae.com;
- a subscription paid directly to AllRegs for an enhanced electronic version with additional features and a higher degree of functionality (than the free version); and

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- a subscription to Fannie Mae through eFannieMae.com for printed copies of the *Servicing Guide* and all servicing-related *Announcements* and *Lender Letters* that are distributed through postal mail.

The updated *Parts VII* and *Part VIII* are also available in PDF format on eFannieMae.com.

Amendments to the *Guide*

Fannie Mae may at any time alter or waive any of the requirements of its *Servicing Guide*, impose other additional requirements, or rescind or amend any and all material set forth in its *Servicing Guide*. The servicer must make sure that its staff is thoroughly familiar with the content and requirements of the *Servicing Guide* as it now exists and as it may be changed from time to time.

Notification of Changes and *Guide Updates*

Fannie Mae notifies servicers of changes and updates to its *Servicing Guide* policies and procedures – as communicated in *Announcements*, *Lender Letters*, and Notices – in two ways:

- by posting the documents on eFannieMae.com and the AllRegs Web sites,
- by e-mail notification of those postings to servicers that subscribe to Fannie Mae’s e-mail notification service and select the option “Servicing Policy Updates.”

Forms, Exhibits, and Content Incorporated by Reference

Information about the specific forms that servicers must use in fulfilling the requirements contained in the *Servicing Guide* is provided in context within the *Guide*. Servicers can access the actual forms in several ways:

- on eFannieMae.com via the Single Family Forms and Documents page, which provides a complete list of forms as interactive PDF files;

- on the AllRegs Web site via embedded links in the free electronic version of the *Servicing Guide* (and through a searchable database with a full subscription to AllRegs Online).

Some materials are only referenced in the *Servicing Guide* and are posted in their entirety on eFannieMae.com. In addition, from time to time, Fannie Mae issues specific guidance, which is incorporated into its *Servicing Guide* by reference. Such specific information – whether it currently exists or is subsequently created – and the exhibits referenced in the *Guide* now or later are legally a part of this *Servicing Guide*.

Technical Issues

In the event of technical difficulties or system failures with eFannieMae.com, with the delivery of the “Servicing Policy Updates” option of Fannie Mae’s e-mail notification service, or with the AllRegs Web site, users may contact the following resources:

- For eFannieMae.com and Fannie Mae’s e-mail notification service, use the “Contact Us” or “Legal” links on the Web site to ask questions or obtain more information.
- For the AllRegs Web site, submit an e-mail support request from the Web site or contact AllRegs Customer Service at (800) 848-4904.

When Questions Arise

Servicers that have questions should contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization’s Servicer Support Center at 1-888-FANNIE5 (888-326-6435) unless specifically instructed otherwise within this *Guide*.

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This *Part*—Delinquency Management and Default Prevention—describes Fannie Mae’s requirements and procedures for servicing whole mortgage loans, participation pool mortgage loans, and MBS mortgage loans from the time they first become delinquent or default is deemed to be reasonably foreseeable (imminent) through the development of special relief measures or foreclosure prevention alternatives to avoid foreclosure proceedings. It does not address any special requirements that may have been imposed under the terms of a negotiated purchase transaction. A servicer is responsible for taking all steps necessary to ensure that the terms of a variance are followed.

In addition, from time to time, Fannie Mae may issue specific written direction to an individual servicer regarding actions to be taken in connection with the foreclosure prevention process (including, but not limited to, actions to be taken in connection with modifications, preforeclosure sales, deeds-in-lieu of foreclosure, and foreclosure) with respect to all mortgage loans purchased or securitized by Fannie Mae or with respect to a designated population. Such directions may require the servicer to cooperate with third parties engaged by Fannie Mae to support the servicer in the fulfillment of the servicer’s obligations under this *Servicing Guide*. Servicers must comply with all such directions.

Insofar as possible, Fannie Mae sets out those instances when its requirements vary for a particular lien type, amortization method, remittance type, servicing option, or ownership interest. Absent any such language, the servicer may assume that the same procedure or requirement applies for all mortgage loans Fannie Mae purchased or securitized as standard transactions. For MBS mortgage loans, the availability of certain foreclosure prevention alternatives may vary depending on the MBS trust documents under which a particular MBS mortgage loan was pooled. Accordingly, it is important for a servicer to identify and distinguish the pool issue date under which an MBS mortgage loan was pooled and be familiar with the varying servicing requirements applicable to those pool issue dates.

To enable servicers to identify the MBS issue dates for mortgage loans that have been — or may be in the future — sold to Fannie Mae for cash and subsequently securitized into MBS pools, referred to herein as Pooled from Portfolio or PFP mortgage loans in MBS pools, Fannie Mae provides the MBS pool issue date for each Pooled from Portfolio mortgage loan

through the Servicer's Reconciliation Facility™ (SURF™). Servicers must adapt their systems to be able to identify the MBS issue dates for Pooled from Portfolio mortgage loans in MBS pools.

A servicer must establish a system for servicing delinquent mortgage loans that follows the accepted standards used by prudent servicers. The servicer's system must include, at least, the following:

- an accounting system that immediately alerts the appropriate department that a mortgage loan is delinquent;
- a collection department staff that is familiar with all FHA, HUD, VA, RD, mortgage insurer, and Fannie Mae procedural and reporting requirements;
- counseling procedures to advise borrowers how to avoid or to cure delinquencies;
- guidelines for the individual analysis of each delinquency;
- instructions and adequate controls for sending delinquency notices, assessing late charges, returning partial payments, maintaining collection histories, reporting delinquencies to credit bureaus, etc.;
- management review procedures to evaluate both the borrower's actions and the servicer's collection efforts before a final decision is made to accept some form of repayment arrangement or to start liquidation proceedings; and
- a method for comparing the servicer's own delinquency and foreclosure ratios with those of others in the industry. (Fannie Mae makes delinquency statistics available to enable a servicer to review the statistical data Fannie Mae maintains on its seriously delinquent mortgage loans.)

This *Part* consists of seven chapters:

- *Chapter 1* — Servicing Standards — describes the servicing standards that servicers must adopt related to the servicer's administrative responsibilities and contractual obligations.

- *Chapter 2* — Collection Procedures — discusses the various collection techniques that Fannie Mae considers to be minimum servicing requirements and describes Fannie Mae’s requirements for full-file reporting of mortgage loan statuses to the credit repositories.
- *Chapter 3* — Delinquency Prevention — discusses some of the techniques that a servicer can use to help a borrower avoid delinquency, such as waiving late charges, accepting partial payments, assigning rents, reapplying principal prepayments, offering early delinquency counseling, etc.
- *Chapter 4* — Special Relief Measures — describes the various relief provisions Fannie Mae offers to assist deserving borrowers who are experiencing temporary hardships.
- *Chapter 5* — Bankruptcy Proceedings — discusses the actions that are necessary to protect Fannie Mae’s interests when a borrower files for bankruptcy protection, including the need for a formal bankruptcy management process.
- *Chapter 6* — Foreclosure Prevention Alternatives — describes the various alternatives to foreclosure that are available, such as HomeSaver Advance™ (HSA), Payment Reduction Plan™ (PRP), loan modifications, preforeclosure sales, mortgage assignments, deeds-in-lieu of foreclosure, VA no-bid buydowns, the Home Affordable Modification Program (HAMP), and second-lien mortgage loan charge-offs.
- *Chapter 7* — Delinquency Status Reporting — discusses Fannie Mae’s requirements for providing updated status information about delinquent mortgage loans to Fannie Mae each month.

**Delinquency
Management and Default
Prevention**

IntroductionServicing
Standards

Part VII

April 28, 2010

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Chapter 1. Servicing Standards (01/01/11)

In performing the services and duties incident to the servicing of mortgage loans, servicers must have written procedures, sufficient, properly-trained staff, and adequate controls and quality assurance procedures in place. This *Chapter* outlines specific administrative responsibilities and contractual obligations that must be performed in the overall conduct of the servicer's mortgage loan delinquency and default prevention processes.

Section 101 Written Procedures (01/01/11)

To ensure that its staff consistently complies with Fannie Mae's servicing requirements in all aspects of collection and foreclosure prevention strategies, the servicer must have fully documented written procedures and must implement measures to determine that its officers and employees adhere to those procedures. The written procedures must address all aspects of delinquency prevention and default servicing.

Occasionally, certain areas of a servicer's performance may show poor results despite the servicer's efforts — such as high delinquencies attributable to unforeseen changes in the economy. When that happens, sound written procedures that are monitored to ensure adherence by its employees will be a positive factor in Fannie Mae's overall evaluation of the servicer's performance.

Section 102 Quality Assurance Program for Delinquency and Default Prevention (01/01/11)

As a part of the servicer's contractual responsibilities as outlined in *Part I, Section 202: Servicer's Basic Duties and Responsibilities*, all servicers must design, document, and implement a quality assurance program to ensure that their servicing practices comply with Fannie Mae's requirements, and with applicable law. All servicers must develop a quality assurance program related to specific aspects of delinquency management and default prevention that includes, but is not limited to, the following:

- monitoring the effectiveness of collection and foreclosure prevention calls to borrowers;
- determining whether documentation of collection and foreclosure prevention activities is accurately maintained in the servicer's loan servicing system;

- monitoring whether foreclosure prevention options are considered in the preferred order of Fannie Mae's workout hierarchy;
- determining that all appropriate foreclosure prevention alternatives were considered and documented prior to the decision to foreclose; and
- determining whether accurate and timely delinquency status information is submitted to Fannie Mae.

Each servicer is required to provide evidence of the quality assurance program and the results of its quality assurance reviews to Fannie Mae upon request.

If the quality assurance reviews identify a problem area, the servicer must promptly take appropriate corrective action and provide training as needs are identified. Quality assurance review findings must be reported to the servicer's senior management and prompt action must be taken to deal appropriately with any material findings. The servicer's final report to its senior management must identify actions being taken, the timetable for their completion, and any planned follow-up actions required.

**Section 103
Staffing and Training
(01/01/11)**

Servicer staffing levels and training must be conducive to achieve acceptable performance standards. A servicer must also ensure that any third-party providers of its outsourced servicing activities have appropriate staffing levels and training.

The servicer must ensure that its staff is able to effectively communicate with borrowers whose mortgage loans are serviced by the servicer. To that end, servicers must employ multilingual staff that can effectively communicate with the diversity of borrowers whose mortgage loans it services. If a servicer does not directly employ multilingual staff that can assist a particular borrower, the servicer must be able to make translation services available to the borrower.

To ensure that their staff members are knowledgeable in all aspects of collection and foreclosure prevention strategies, all servicers must design and implement a training program that includes the fundamentals of all Fannie Mae foreclosure prevention programs and familiarity with the workout hierarchy, among other Fannie Mae-related topics. All

collections, foreclosure prevention, and management staff must receive training on an annual basis and as training needs are identified through quality assurance reviews. It is recommended that all staff members that regularly engage with customers be included in the training.

In addition to training on Fannie Mae's existing *Guide* requirements, servicers are required to deliver continual training programs to all employees and agents on policy changes communicated through future Announcements, Lender Letters, and any other correspondence that Fannie Mae may issue. A servicer may use the training materials provided by Fannie Mae or materials that the servicer itself may develop.

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Chapter 2. Collection Procedures (01/01/11)

The servicer must employ collection and foreclosure prevention strategies that are designed to meet the goal of bringing delinquent mortgage loans current in as short a time as possible. In this *Chapter*, Fannie Mae has provided *Exhibit 1: Outbound Call Attempts Guidelines*, *Exhibit 2: Letters and Notices Guidelines*, and *Exhibit 3: Other Contact Types and Acceleration Guidelines*, which outline a minimum level of methods and attempts a servicer must utilize to contact the borrower during the various stages of delinquency for a first-lien, conventional whole mortgage loan or participation pool mortgage loan that Fannie Mae holds in its portfolio or an MBS mortgage loan serviced under the special servicing option. Additional collection or foreclosure prevention strategies with which the servicer has had success are encouraged. The servicer of a second-lien mortgage loan must keep in mind that the servicing of delinquent second-lien mortgage loans requires accelerated follow-up and expedited liquidation decisions if the collection methods used are not successful. The servicer must document all collection efforts in its permanent mortgage loan files.

It is particularly important that the servicer have procedures to address a one-payment delinquency immediately to prevent it from becoming more serious. An early determination of the reason for the delinquency gives the servicer and the borrower time to arrange an acceptable method for curing it. If an agreement cannot be reached, the servicer must work with the borrower to determine the appropriate foreclosure prevention alternative that best satisfies the interests of the servicer, borrower, and Fannie Mae.

Section 201 Inbound Call Coverage (01/01/11)

Servicers must have a written policy that is sufficient to address inbound call coverage for customer service, collections, and foreclosure prevention departments. The foreclosure prevention department staff must be available during inbound and outbound collection activity unless collections staff are also well-versed in foreclosure prevention workout options.

Fannie Mae may from time to time publish Servicing Best Practices Reference Guidelines on eFannieMae.com to provide guidance on proven, successful approaches to collection and foreclosure prevention outreach. Servicers are encouraged to review and implement any such guidelines.

**Section 202
Outbound Call
Attempts (01/01/11)**

Phone calls are inexpensive and are highly effective when used properly. Fannie Mae suggests that they be used as the principal form of contact with a delinquent borrower in order to effectuate payment on a delinquent or defaulted account or to solicit foreclosure prevention alternatives. When talking to the borrower, the servicer must emphasize the importance of making payments on or prior to their due dates. If the borrower is in a position to bring the account current, the servicer must make arrangements to collect payment on a date certain. If the borrower is not in a position to bring the account current, the servicer must discuss the types of foreclosure prevention alternatives that are available.

For specific instructions on when outbound call attempts must be initiated, refer to *Exhibit 1: Outbound Call Attempts Guidelines*. Specifically, servicers should note that unmanned automated message calls do not constitute a sufficient attempt to contact a borrower. Also, a servicer must vary the days of the week and times of day of calls to an individual borrower to effectuate adequate outreach.

For ***second-lien mortgage loans***, the servicer must begin its telephone contacts before it mails the late payment notice. Telephone contact must be particularly concentrated during the five- to ten-day period that precedes the due date of the next installment.

**Section 203
Letters (01/01/11)**

Form letters may be useful under certain circumstances. However, an individually written letter is a more effective collection technique than a form letter because it emphasizes the seriousness of the delinquency. Individual letters are required after the 17th day of the delinquency.

Servicers should refer to *Exhibit 2: Letters and Notices Guidelines* for the specific requirements related to the timing and types of letters and notices that must be sent to the borrower.

In the early stages of delinquency, a servicer must contact the borrower to determine his or her commitment and capacity to cure the delinquency. In order to better evaluate whether some special relief or foreclosure prevention alternative is appropriate, a servicer must send a foreclosure prevention solicitation letter to the borrower between the 35th and 45th day of delinquency, which must include a solicitation of the borrower for participation in the Home Affordable Modification Program (HAMP) as outlined in *Section 610, Home Affordable Modification Program*

(04/21/09). The servicer may determine the content and format of its solicitation letter—as long as the solicitation letter includes these key points:

- A statement that the borrower is in default under the terms of the mortgage loan, with an acknowledgment that he or she may be experiencing temporary or permanent financial problems that led to the default.
- An expression of concern indicating that the servicer wants to work with the borrower to find a mutually agreeable way to resolve the delinquency and avoid foreclosure.
- A solicitation of the borrower for participation in HAMP, including the details contained in the sample [Solicitation Letter](#) (described in *Section 610.04.01, Borrower Solicitation (06/01/10)*).
- A summary of the other options that may be available to help the borrower cure the delinquency, with emphasis on how these options can be tailored to fit the borrower's individual circumstances (whether they are temporary or permanent in nature) and a caution that not all of the options are available to everyone. This summary can be part of the letter or a separate brochure, pamphlet, flyer, etc.
- A request for basic information about the borrower's circumstances (including preliminary financial information, if the servicer finds that useful and believes that requesting the information will not deter the borrower from contacting the servicer as soon as possible) to help the servicer determine which options appear to be most appropriate for the borrower. The type of information needed may be listed in the letter, included in any summary of the servicer's foreclosure prevention options that is sent with the letter, set out in a short questionnaire that the borrower can return to the servicer, or presented as a script that the borrower can refer to when he or she calls the servicer.
- A toll-free telephone number that the borrower can call to discuss his or her situation or to obtain more information about the types of relief or foreclosure prevention alternatives that are available.

- A reminder that the borrower is obligated to make all future payments as they come due even while the servicer is evaluating the types of assistance that may be available, plus a caution that the servicer cannot guarantee that the borrower will receive any (or a particular type of) assistance.
- Appropriate disclosure language related to the servicer's acting as a debt collector, if required.

Fannie Mae's approval of the servicer's foreclosure prevention solicitation letter is not required.

**Section 204
Late Notices (01/01/11)**

There are two types of late notices that may be used—a payment reminder notice and a first foreclosure prevention solicitation. The payment reminder notice can be particularly important to promote good paying habits for new borrowers.

For most ***first-lien mortgage loans***, the servicer must send the borrower a ***payment reminder notice*** for any payment that has not been received by the 16th day after it is due. This notice must address the borrower, state a desire to work with the borrower to preserve homeownership, and state the amount of late charges that are due, if applicable. If the mortgage loan is one for which Fannie Mae requires the servicer to offer early delinquency counseling, the servicer must send a payment reminder notice and a first foreclosure prevention solicitation. In this case, the ***payment reminder notice*** must be mailed no later than the 10th day of delinquency and the ***first foreclosure prevention solicitation*** must be mailed no later than the 17th day of delinquency. (Also see *Section 308, Offering Early Delinquency Counseling (01/31/03)*.)

For ***second-lien mortgage loans***, a ***payment reminder notice*** must be mailed immediately after the due date of the first unpaid installment to inform the borrower that a late charge will be assessed if the payment is not received by a specified date. Then, if the payment has not been received by the specified date, a ***first foreclosure prevention solicitation*** stating the amount of late charges due must be sent to the borrower.

Refer to *Exhibit 2: Letters and Notices Guidelines* for additional information.

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**Section 205
Payment Change
Notification (01/01/11)**

A servicer must notify a borrower in accordance with the original mortgage loan documents and applicable law of balloon mortgage loan maturity, or changes in payment due to ARM reset, modification step interest rate adjustments, buydowns, and escrow changes. In order to prepare and potentially counsel a borrower in the event of a balloon loan mortgage maturity or a dramatic payment increase (i.e., a change in payment that will exceed 10 percent of the original payment), a servicer must also adhere to the broader notification timeframes in *Exhibit 4: Payment Change Notification Guidelines* to determine the appropriate time to send a payment change notification to a borrower.

**Section 206
Face-to-Face Interviews
(01/31/03)**

For FHA Section 248 first-lien mortgage loans and HUD-guaranteed Section 184 mortgage loans, the servicer must schedule (or attempt to schedule) a face-to-face interview with the borrower in accordance with applicable HUD servicing guidelines for such mortgage loans. Generally, such face-to-face interviews must be held, unless not required by applicable HUD guidelines, (a) before the borrower has missed three monthly payment installments, (b) within 30 days after a default on a repayment plan, and (c) at least 30 days before assigning a defaulted mortgage loan to HUD. In any such face-to-face interview conducted, the servicer must discuss the options available for curing the delinquency, the action that will be taken if the delinquency is not cured, and any other topic required by applicable HUD servicing guidelines for such mortgage loans.

**Section 207
Contact With Junior
Lienholders (01/31/03)**

Throughout the delinquency period, the servicer must maintain contact with any junior lienholders to keep them advised of the status of the account. A junior lienholder may decide to advance funds to bring the mortgage loan current if that is necessary to protect its interest in the security property.

**Section 208
Contact With First-Lien
Mortgage Loan Servicer
(01/31/03)**

If the servicer of a second-lien mortgage loan has not heard from the borrower by the 17th day of delinquency, it must contact the servicer of the first-lien mortgage loan to determine the status of that mortgage loan and any action that the servicer is contemplating.

**Section 209
Notifying Credit
Repositories (11/01/04)**

A servicer must advise borrowers who have reached the delinquency stage that their mortgage loan delinquency has been reported to the major credit repositories, and that the appearance of a mortgage loan delinquency may impact the borrower's ability to obtain other forms of credit. These

requirements ensure that borrowers are advised of the credit implications of their delinquency and that those borrowers who improve their payment habits benefit in their future efforts to obtain credit at the lowest possible cost. This knowledge may result in the borrower's bringing the account current when other collection efforts have been unsuccessful.

Fannie Mae requires the servicer to provide a "full-file" status report for the mortgage loans it services for Fannie Mae to each of the four credit repositories listed in *Exhibit 5: Major Credit Repositories*. "Full-file" reporting means that the servicer must describe the exact status of each mortgage loan it is servicing 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 cutoff date—for example, the end of a first week of a month—to ensure that 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 the following: new origination, current, delinquent (30-, 60-, 90-days, etc.), foreclosed, and charged 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 or occurs during the tour of active duty for a borrower who has been granted military indulgence.)

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. A servicer must respond promptly to any inquiries from borrowers regarding specific mortgage loan status information about them that the servicer reported to the credit repositories. Servicers must comply with all applicable provisions of the Fair Credit Reporting Act, including those provisions that address obligations with respect to disputed or inaccurate information.

All four credit repositories accept the same format for the reporting of mortgage loan status information—the standard metro format. However, they may use different codes for identifying different mortgage loan statuses. A servicer must verify the appropriate codes for full-file reporting with each of the repositories. A smaller servicer with only a few records to report is allowed to report manually.

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Exhibit 1

Exhibit 1: Outbound Call Attempts Guidelines (01/01/11)

The following calling guidelines are subject to all applicable debt collection laws, including the Fair Debt Collection Practices Act (FDCPA), the provisions of the United States Bankruptcy Code, and any applicable state laws. All communications with borrowers must comply with the requirements of applicable law.

Work Rule	Minimum Call Requirements	
Welcome calls	5 days after servicing transfer, including concurrent transfers	Initiate welcome calls to contact borrowers to confirm mortgage loan terms and contact information and set payment expectations. Absent borrower contact or receipt of payment, the servicer must make at least three welcome call attempts by month end following the file transfer from the prior servicer. The servicer must use commercially reasonable efforts, subject to applicable laws, to maintain accurate contact information for each borrower. If phone numbers are invalid or the RESPA notification of transfer letter is returned, the servicer must initiate skip trace activities for alternate numbers or mailing addresses.
Collection calls	3 to 15 days after payment due date	The servicer must have a policy in place for collection call campaigns. The servicer may either use a methodology for reviewing borrower payment pattern or use a behavioral modeling tool to establish its collections calendar.
	16 - ongoing (through foreclosure sale)	Continue or begin calling attempts by telephone on the day after the late fee is charged until: 1) both a right party contact has been made and a promise to pay or payment is received; 2) a reasonable resolution has been negotiated, subject to the requirements of the <i>Servicing Guide</i> and applicable laws; or 3) the case is removed from the calling queue due to justifiable reasons based on a response from the borrower. Call until contact is established with a minimum of two calls per week.
	30 days prior to referral and 30 days prior to foreclosure sale	Continue to contact the borrower through traditional methods if contact has been established. If no contact has been made in the last 30 days, initiate manual call campaigns.

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Work Rule	Minimum Call Requirements	
Solicitation and workout follow-up	Ongoing	When any foreclosure prevention solicitation is required, the servicer is required to attempt no fewer than three phone calls to the borrower 5 to 15 days after no response upon solicitation mailing. On day 15, a follow-up letter from the servicer is to be sent to the borrower to attempt to gain right party contact with the intent to qualify the borrower for a foreclosure prevention solution. The servicer is then required to attempt no fewer than three phone calls to the borrower between the 15 th and 30 th day after the initial solicitation.
	During foreclosure prevention review process	Continue to contact the borrower to follow up on either missing information or provide a status update weekly during the foreclosure prevention review process.
	10 days after offer with no response and/or with missing information	After an offer has been sent to the borrower, the servicer must follow up with the borrower with a minimum of two calls per week and, if necessary, a reminder letter after the offer has been sent, until either the required payment and/or other documentation has been received. If no response after the expiration of the offer or any other imposed deadline, the servicer should document on its system the calls made and letters sent and then move to other foreclosure alternative solutions.
	Payments during trial period (prior to permanent modification)	The servicer must follow up with the borrower with a minimum of two calls per week and, if necessary, a reminder letter until monthly trial payments are received. If the borrower is unresponsive after the expiration of the trial period, the servicer must document on its system the calls made and letters sent and then move to other foreclosure alternative solutions.
Post-modification	3 to 5 days after payment due date	Absent an automated or scheduled payment draft, the servicer must begin calling the borrower in a specialized post-modification campaign. Specialized campaigns must continue until the borrower has an established 9 months of a current payment pattern.

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Exhibit 2

Exhibit 2: Letters and Notices Guidelines (01/01/11)

The following letters and notices guidelines are subject to all applicable debt collection laws, including the Fair Debt Collection Practices Act (FDCPA), the provisions of the United States Bankruptcy Code, and any applicable state laws. All communications with borrowers must comply with the requirements of applicable law.

Letter Type	Timing	General Guidelines	Additional Information
Payment Reminder	Day 17 after payment due date	A separate payment reminder notice must be sent after a scheduled payment remains unpaid. Written communications must be varied in style and presentation. The servicer must direct the letter to the borrower specifically.	The servicer must develop and implement a communication strategy establishing a desire to work with the borrower to preserve homeownership.
First Foreclosure Prevention Solicitation	35 to 45 days after payment due date	In the absence of a pending resolution to the default, mail First Foreclosure Prevention Solicitation. This is a separate mailing which offers information promoting homeownership retention (as a preferred outcome) and presents liquidation options. One solicitation is required every 90 days on the rolling delinquency population.	The solicitation must solicit the borrower for participation in HAMP.
Acceleration or Breach Letter	45 to 62 days after payment due date	Mail the Acceleration or Breach Letter and any additional required notification, as required by applicable law.	The servicer must send the Breach Letter on the 45th day of delinquency, but may postpone sending it until the 62nd day of delinquency to facilitate foreclosure prevention alternatives.
Second Foreclosure Prevention Solicitation Letter	Prior to day 80	Attempt hand delivery, overnight, or two-day delivery of Second Foreclosure Prevention Solicitation. This is an additional mailing that offers a possible home retention offer based on Fannie Mae's workout hierarchy. This solicitation requires the borrower to communicate with the servicer and submit the necessary information to determine the most appropriate foreclosure prevention strategy.	

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Letter Type	Timing	General Guidelines	Additional Information
Preapproved Solicitation Letter or Alternative Foreclosure Prevention Solicitation	Within 45 days after referral to foreclosure (unless the jurisdiction has a short foreclosure time frame that would make sending the solicitation not practical, in which case the additional solicitation is not required)	<p>In circumstances where a Preapproved Workout is available, mail Preapproved Solicitation via overnight or two-day delivery to the borrower.</p> <p>The servicer will send a Preapproved Workout solicitation based on the Fannie Mae workout hierarchy, which may include HAMP, PRPs, modifications, HSA, presale, and deed-in-lieu of foreclosure.</p> <p>In circumstances where a Preapproved Workout is not available, mail an alternative foreclosure prevention solicitation.</p>	

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Exhibit 3

Exhibit 3: Other Contact Types and Acceleration Guidelines (01/01/11)

The following contact guidelines are subject to all applicable debt collection laws, including the Fair Debt Collection Practices Act (FDCPA), the provisions of the United States Bankruptcy Code, and any applicable state laws. All communications with borrowers must comply with the requirements of applicable law.

Solicitation Type	Timing	General Guidelines	Additional Information
Door Knock	Within 30 days after referral to foreclosure	If no payment arrangement or workout is pending, the servicer must perform face-to-face (door knock) and deliver a copy of the Second Foreclosure Prevention Solicitation Letter previously sent.	At least three attempts must be made (one on the weekend where permitted by applicable law) to personally deliver the solicitation. The servicer bears responsibility for conducting the door knocking properly and, if applicable, for managing the door knock vendor and the vendor's activity. The servicer should not attempt face-to-face (door knock) contact if the property is known to be vacant or non-owner occupied.
Skip Trace	Ongoing	During collection attempts, if it is determined that the borrower contact information is incorrect (either telephone numbers or mailing address), conduct skip trace research in an attempt to locate valid contact numbers and/or mailing addresses.	
Property Inspection	Varied	Refer to <i>Part III, Sections 302 and 303</i> .	
Pre-Referral Account Review	30 to 34 days after issuance of the Acceleration or Breach Letter	Prior to referral to foreclosure, the servicer must review the account to confirm contact attempts have been made in accordance with <i>Exhibit 1: Outbound Call Attempts Guidelines</i> and <i>Exhibit 2: Letters and Notices Guidelines</i> and no payment or workout arrangements are pending. Once the servicer confirms compliance, the mortgage loan must be referred to a foreclosure attorney (or trustee). If the servicer is servicing a second-lien mortgage loan, the servicer must obtain authorization from Fannie Mae before initiating foreclosure.	

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Solicitation Type	Timing	General Guidelines	Additional Information
Preforeclosure Account Review	30 days prior to sale (or in jurisdictions with short foreclosure time frames, within such shorter period before the sale as is practical)	<p>Prior to going to foreclosure sale, the servicer must review the account to confirm that contact attempts have been made in accordance with <i>Exhibit 1: Outbound Call Attempts Guidelines</i> and <i>Exhibit 2: Letters and Notices Guidelines</i> and no payment or workout arrangements are pending.</p> <p>Once the servicer confirms compliance, the mortgage loan must be allowed to go to foreclosure sale.</p>	

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Exhibit 4

Exhibit 4: Payment Change Notification Guidelines (01/01/11)

Payment Change Types	Days Prior to Change	Minimum Required Action
ARM resets	60	Send informational notification educating the borrower on the pending reset.
	45 to 30	Send notification detailing the pending change.
	45 to ongoing	Phone agents must be trained to identify potential default situations and the servicer must have policies and procedures in place to ensure prompt referral to a default management unit to offer default prevention options.
Modification Step Interest Rate Adjustments	60	Send notification detailing the pending change.
	45 to ongoing	Phone agents must be trained to identify potential default situations and the servicer must have policies and procedures in place to ensure prompt referral to a default management unit to offer alternative default prevention options.
Balloon Payments	180	Send notification detailing the pending balloon payment due.
	90 to ongoing	Phone agents must be trained to identify potential default situations and the servicer must have policies and procedures in place to ensure prompt referral to a default management unit to offer default prevention options.
Buydowns	90	Send notification detailing the pending rate increase.
	45 to ongoing	Phone agents must be trained to identify potential default situations and the servicer must have policies and procedures in place to ensure prompt referral to a default management unit to offer default prevention options.
Escrow Changes	45 to 30	Send notification detailing the pending change.
	45 to ongoing	Phone agents must be trained to identify potential default situations and the servicer must have policies and procedures in place to ensure prompt referral to a default management unit to offer default prevention options.

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Exhibit 5

Exhibit 5: Major Credit Repositories (09/30/05)

A full-file status report for each mortgage loan serviced for Fannie Mae must be sent to the following credit repositories each month. When initially establishing a relationship with a repository, the servicer must indicate that the relationship is being established to comply with Fannie Mae's requirements.

Company	Telephone Number	E-mail Address
Equifax Information Services 1550 Peachtree Street, NW Atlanta, GA 30309	Servicers that need to set up an account should call (800) 685-5000 and select Option 2. Servicers that have an account number may call their local sales representative for all inquiries.	www.equifax.com
Experian Information Solutions Automated Media Control (AMC) 601 Experian Parkway Allen, TX 75002	Servicers that need to set up an account should call (800) 831-5614 and select Option 3. Servicers that already have a subscriber number and a vendor identification number may call Experian Data Management at (800) 426-1779.	www.experian.com
Innovis Data Solutions 1651 N.W. Professional Plaza Columbus, OH 43220	Servicers should call (614) 538-2123 for all inquiries.	DMSG@innovis.com
Trans Union Corporation 555 West Adams Chicago, IL 60661	Servicers should call (312) 258-1818 to get the name of the local bureau to contact about setting up an account or obtaining other information.	www.transunion.com

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Chapter 3. Delinquency Prevention (11/01/04)

Fannie Mae requires servicers to have policies that support delinquent borrowers' efforts to meet their mortgage loan obligations so they can avoid foreclosure and remain in their homes when feasible. That means, among other things, using available tools that are appropriate under the circumstances to avoid foreclosure; being judicious in approaching foreclosure prevention efforts (for example, not creating a mortgage loan modification that clearly cannot be supported by the borrower's income); and promoting open and effective communication with borrowers, including giving borrowers reasonable opportunity to resolve legitimate disputes.

The servicer must analyze each delinquent account to determine

- the reason for the default;
- whether the reason is a temporary or permanent condition; and
- the borrower's commitment and capacity toward repayment of the debt.

Borrowers who are experiencing temporary hardships may have difficulty making their mortgage payments. A servicer must make every effort to assist borrowers who are cooperative, acting in good faith, and willing to work out a way to prevent or cure their delinquency. This *Chapter* discusses some methods that may be used to assist borrowers. The servicer must determine which approach will be the most effective based on the individual circumstances.

The servicer of a second-lien mortgage loan must contact the first-lien mortgage servicer to determine the status of the first-lien mortgage loan, any previous or ongoing collection efforts employed by that servicer, and the borrower's commitment and performance during those collection efforts. The servicer must then take these things into consideration when deciding the approach it intends to use.

**Section 301
Assessing Late
Charges (07/10/09)**

Imposing late charges to help prevent delinquencies is most effective when the borrower is able to pay on time but does not do so. It may not be effective as a collection tool when the borrower is simply unable to make the payment because of some unforeseen circumstances.

When the servicer receives a payment that does not include the required late charges, the servicer's handling of the payment depends on the type of mortgage loan involved and the situation as the servicer perceives it.

The servicer may defer late charges to a future date. However, the servicer cannot foreclose the mortgage loan later if the only delinquent amount is unpaid late charges. If permitted by applicable law, a servicer may hold as unapplied funds payments that omit the late charge. However, the servicer may not impose any late fee or delinquency charge in connection with that payment or any subsequent payments that are received and would have otherwise been applied to the mortgage loan by the due date or within any grace period when the delinquency is solely attributed to the late fee or delinquency charge. Payments that cover the full mortgage loan obligation without the late charge should not be returned to the borrower to the extent that acceptance would not jeopardize the servicer's position in legal proceedings (for example, foreclosure).

For *FHA or HUD mortgage loans*, the servicer must process the payments in accordance with HUD's requirements, regardless of failure to pay any applicable late charges.

In certain hardship cases, the servicer should consider waiving late charges altogether. If the interest rate of a mortgage loan has been reduced to 6 percent under the terms of the Servicemembers Civil Relief Act, the servicer is expected to waive the collection of late charges during the period for which the reduced interest rate remains in effect. (also see *Part III, Chapter 1, Exhibit 1*)

**Section 302
Accepting Partial
Payments (06/01/07)**

The servicer of a first-lien mortgage loan must accept a partial payment, and hold it as "unapplied funds" in a T&I custodial account, if the borrower

- has a commitment toward the repayment of the mortgage loan obligation;

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- is not habitually delinquent;
- does not have a history of remitting checks that are returned for insufficient funds; and
- can pay the balance of the payment within the next 30 days.

The servicer of a second-lien mortgage loan also must accept partial payments under the above conditions as long as it is able to verify that the first-lien mortgage loan is in a current status.

As a rule, a servicer should accept partial payments only to help cure a delinquency. It should return partial payments when it believes that this action will be an effective collection tool. However, Fannie Mae does not want the servicer to return partial payments routinely. In addition, FHA, HUD, and VA require that partial payments be accepted under certain conditions that they specify.

If a borrower indicates that he or she will not be able to make full payments on a continuing—but temporary—basis, the servicer must determine whether some sort of relief provision could be used to bring the account current or at least to keep the delinquency from getting worse.

**Section 303
Using an Attorney to
Collect Payments
(01/31/03)**

When a borrower has a history of delinquencies, the servicer may use an attorney to collect delinquent payments if at least two are past due. The servicer may not require the borrower to pay the attorney's fees, nor may it request reimbursement for such fees from Fannie Mae. The servicer must absorb the entire cost of using an attorney for this purpose.

Because the use of an attorney for collection purposes is at the servicer's discretion, the servicer is fully responsible for any consequences that result from its decision to collect delinquent payments in this manner.

**Section 304
Collecting Under an
Assignment of Rents
(01/31/03)**

The servicer of a delinquent mortgage loan secured by property that is being rented must diligently seek out instances in which enforcing an assignment of rents provision would be appropriate, taking into consideration the policies of the mortgage insurer or guarantor. Generally, the rental income can be applied toward the delinquency if

- the mortgage loan provides for an assignment of rents;

- other arrangements to repay the delinquency cannot be made;
- local law allows the mortgagee to collect rents under these circumstances; and
- this action will not create any new rights for the occupant that might impair Fannie Mae's ability to foreclose the mortgage loan at a later date.

When the servicer believes that it is appropriate to pursue collections under the assignment of rents provision, it must recommend a specific action to its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435. If Fannie Mae agrees, it will provide guidance, including legal instructions, for collecting and processing rents under this procedure.

Any rental income that is collected on a delinquent mortgage loan must be applied in accordance with the terms of the note and security instrument.

**Section 305
Reapplying Principal
Prepayments (06/01/07)**

In some cases, a borrower who has made additional principal payments toward his or her account at some time in the past may ask the servicer to reapply these principal prepayments to cure a delinquency. The servicer may do so for a whole mortgage loan or a participation pool mortgage loan (but not for a mortgage loan that has been pooled to back an MBS issue, including Pooled from Portfolio mortgage loans), as long as

- the borrower submits a written request;
- the reapplication of the principal prepayment does not result in the mortgage loan balance being higher than it would have been had the original amortization schedule for the mortgage loan been followed; and
- the borrower agrees to submit any additional funds that are needed to supplement the prepayment so that the total delinquency can be cured. If the borrower cannot raise the additional funds, the servicer may combine the reapplication of a principal prepayment with a relief provision or consider modifying the mortgage loan. (also see *Section 602, Mortgage Modifications (01/01/09)*, and *Part III, Section 102.01*)

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**Section 306
Listing Property for
Sale/Rental (01/31/03)**

If the reason for the borrower's delinquency appears to be permanent, the servicer must consider the borrower for foreclosure prevention alternatives in accordance with Fannie Mae's workout hierarchy, including listing the property for sale or rent. This would allow the borrower either to pay the mortgage loan off or to reduce the delinquency. Some borrowers may be eligible for Fannie Mae's preforeclosure sale procedures (under which Fannie Mae may accept less than the total amount required to pay the mortgage debt in full). These procedures are described in *Section 604, Preforeclosure Sales (01/31/03)*.

If the borrower is successful in renting the property, the servicer must suggest that an agent be appointed to collect the rents, unless Fannie Mae issues instructions to the contrary. Any rental income that is collected must be applied in accordance with the terms of the note and security instrument. (Also see *Section 304, Collecting Under an Assignment of Rents (01/31/03)*.)

**Section 307
Referring to Counseling
Agencies (01/31/03)**

The servicer should be aware of any programs that might assist borrowers in resolving their delinquencies or of any counseling agencies that might help them in their debt management—and refer borrowers to those agencies when it is appropriate or required by applicable law or regulation.

**Section 308
Offering Early
Delinquency
Counseling (01/31/03)**

Fannie Mae requires the servicer to offer early delinquency counseling to borrowers who have mortgage loans that were closed as community lending mortgage loans. Early delinquency counseling must be offered the first time the borrower is delinquent and must remain available for any delinquency that occurs during the seven years following the date the mortgage loan was originated. (If the mortgage loan is included in a transfer of servicing that will become effective before this seven-year period expires, the transferee servicer must be informed about the continuing obligation to offer this counseling.)

A servicer must document the steps it takes to comply with Fannie Mae's early delinquency counseling requirements. At a minimum, the following information must be included in the individual loan servicing record for a mortgage loan (regardless of whether the servicer or a third party provides the counseling): the date(s) that counseling was offered, the borrower's response(s), the name of the organization providing the counseling (if any), and a brief summary of the results of the counseling. If a servicer relies on a third-party counseling agency, it must be fully aware of the

status or outcome of all counseling efforts the agency takes for a specific case. Each month, the servicer must prepare a status report of the actions taken by its third-party counselors (unless the third-party counselor sends the servicer a written status report that includes sufficient detail). At a minimum, the information in the status report must include the information Fannie Mae requires the servicer to retain in its individual loan servicing records.

All collection and counseling efforts must comply with the requirements of applicable federal and state laws, including the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act.

Section 308.01
Choosing the Counselor
(01/31/03)

A servicer may choose to provide the early delinquency counseling itself or to use the services of a local delinquency counseling agency, a mortgage insurance company, or any other type of organization that provides the type of delinquency counseling services Fannie Mae requires. Before deciding to use a mortgage insurer or any other third party to provide delinquency counseling services, a servicer must take into consideration the limitations that the Fair Credit Reporting Act and any applicable privacy laws and regulations impose on the ability of the servicer and a third party to exchange consumer credit and other information about the borrower.

- **Third-party providers.** The servicer is responsible for making sure that any third-party provider it uses is able to provide the type of early delinquency counseling services Fannie Mae requires. Fannie Mae does not endorse the services of any particular third-party provider. However, it does suggest that any servicer that needs information about counseling agencies specializing in delinquency and default counseling contact HUD to obtain a list of HUD-approved counseling agencies.
- **Mortgage insurers.** A number of the private mortgage insurers have established programs for providing early delinquency counseling to borrowers. A servicer may use any of the mortgage insurers that have such programs to provide the early delinquency counseling services Fannie Mae requires.

- **Servicer-provided counseling.** A servicer may offer its own in-house programs for delinquency counseling. Although a servicer does not have to have a separate functional area to administer such programs, it does need to have on its staff employees who have been trained to provide the types of borrower assistance that is required. An in-house delinquency counseling program operated by a servicer's delinquent loan servicing staff may be particularly effective since those individuals are fully aware of the servicer's policies for granting forbearance or offering foreclosure prevention alternatives and may already have developed an effective, ongoing relationship with the borrower through contacts they made during the early stages of the delinquency.

Section 308.02
Objectives of Counseling
(01/31/03)

Early delinquency counseling involves identifying the reason(s) a borrower did not make his or her mortgage payment on time and working with the borrower to successfully resolve any problems so that he or she can more easily meet the mortgage obligation in the future. Its objectives and focus are much different from those of traditional mortgage collection efforts. Rather than focusing solely on the latest delinquency and the steps that need to be taken to bring the mortgage loan current, early delinquency counseling involves a more hands-on, personal, interactive relationship with the borrower that is designed to address broader financial issues (such as family money management, budgeting, and, if appropriate, arrangements and/or referrals for debt management programs). Mortgage collection efforts typically end when a mortgage loan is brought current; the delinquency counseling process might be just beginning at this point.

Situations that are the most likely to be resolved through counseling are those involving poor debt management, a lack of cash reserves to handle unanticipated expenses (such as emergency property repairs), or a temporary reduction in income. Counseling should not be used in situations in which the borrower has demonstrated his or her unwillingness to fulfill the mortgage obligation or in which it does not appear that the delinquency is curable. In these situations, the servicer must work with its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to determine whether to pursue a foreclosure prevention alternative or foreclosure.

A servicer that uses third-party counseling agencies or mortgage insurers to provide early delinquency counseling must make sure that the counselors are aware of the servicer's and Fannie Mae's policies and procedures for granting forbearance to deserving borrowers, as well as any programs—such as mortgage insurance company advances and government or nonprofit agency emergency repair funds—that might benefit a borrower. This will enable the servicer to include the third-party counselor or mortgage insurer in the development and execution of any technique used to resolve the delinquency, as long as each entity is aware of the limitations that are imposed by the Fair Credit Reporting Act and any applicable privacy laws and regulations. When the third-party counseling agency is a nonprofit organization, close attention must be paid to ensuring that none of the actions taken by the nonprofit organization will impair its nonprofit status or result in its being considered as an agent of the servicer.

Section 308.03
Laying the Groundwork
(01/31/03)

As part of the home-buyer education process Fannie Mae requires for community lending mortgage loans before they are closed, the borrower is told about the benefits of early delinquency counseling and advised of the importance of working with any counseling agency to resolve any future financial problems that arise before they become major stumbling blocks. The borrower is asked to sign a Borrower's Authorization for Counseling (see *Exhibit 1: Borrower's Authorization for Counseling*) that authorizes the servicer—in the event of a mortgage delinquency—to release to a third-party counselor or mortgage insurer certain information from the borrower's mortgage loan file that relates to the servicer's experience in servicing the mortgage loan and authorizes the third-party counselor or mortgage insurer to make recommendations regarding resolution of any delinquency based on information obtained during any counseling session. The servicer must have an executed Borrower's Authorization for Counseling form in its files before it can release any of the borrower's payment history or delinquency information to a third-party counselor. In some cases, the servicer may not have this form on file for a *Fannie 3/2*[®] mortgage loan because Fannie Mae did not require the servicer to offer early delinquency counseling for *Fannie 3/2* mortgage loans when that mortgage loan was originated. The first time one of these mortgage loans is delinquent, the servicer must send the borrower a Borrower's Authorization for Counseling for execution. (The servicer does not need to send this form to the borrower if it offers the early delinquency counseling

itself.) If the borrower does not execute and return the Borrower's Authorization for Counseling, the servicer may consider the failure to return the form as a declination of the offer for counseling (and, therefore, must not disclose any information about the borrower to a third-party counselor). The servicer does not need to offer early delinquency counseling to such borrowers in connection with any subsequent delinquency.

Shortly after closing—and before the first payment on the mortgage loan is due—the servicer must send the borrower a letter stressing the importance of making payments on time and immediately communicating with the servicer should a problem arise. (This letter may be sent as a separate letter or the points that Fannie Mae wants addressed may be incorporated in the welcome letter that the servicer generally sends to a borrower after loan closing.) The letter to the borrower must provide the servicer's business hours; a toll-free telephone number that the borrower may call to discuss any matters related to the mortgage loan; and instructions on the action to take should he or she become delinquent and be unable to bring the mortgage loan current in a timely manner. The instructions to the borrower must request that the borrower immediately call or write the servicer if he or she is unable to make a mortgage payment and ask that the following information be provided at that time: the borrower's name, the servicer's loan number, the property address, a telephone number at which the borrower may be contacted (and the hours he or she may be reached at that number), and a brief explanation of why the borrower is unable to make the mortgage payment. A copy of this letter to the borrower must be included in the borrower's individual mortgage loan file.

Section 308.04
The Counseling Session
(01/31/03)

The early delinquency counseling process will typically be preceded by a documented collection effort that includes, among other things, mailing payment reminder notices, making reminder telephone calls, mailing late payment notices, making follow-up telephone calls, arranging a face-to-face interview with the borrower, and offering the early delinquency counseling. (See *Chapter 2, Collection Procedures*, for more information about the timing of these collection efforts.) If the borrower accepts the servicer's offer of early delinquency counseling, the servicer must schedule the initial counseling session by no later than the 45th day of delinquency.

Fannie Mae recognizes and will accept different ways and methods for providing the counseling. This *Chapter* addresses one general approach to conducting the counseling session. The counselor should ask the borrower about property occupancy status, the reason for the delinquency, determine if the hardship is short term or long term, his or her employment status, the amount of family income and whether it has decreased since the mortgage loan was originated, the amount of the borrower's total outstanding debt and the required monthly payments, and whether the borrower has a budget established to control expenses. Based on this information, the counselor should be able to evaluate the borrower's ability to make future mortgage payments and help the borrower understand and decide what opportunities are available; conclude whether the borrower's financial problem appears to be a short-term or long-term problem; evaluate whether the borrower can make the payments, but is not because he or she has not assigned the proper priority to doing so; decide whether the borrower understands the implications of a mortgage foreclosure; and formulate a recommendation for a plan of action that will resolve the delinquency and reduce the borrower's overall debts.

The counselor's recommended plan of action should include the development of a budget and a debt repayment plan. Once the counselor has formulated a proposed plan of action for addressing the borrower's problems, he or she should present a recommendation for resolving the delinquency to the appropriate person in the servicer's office so the servicer can make a decision about how to proceed.

**Section 309
Third-Party Notification
for Mortgage Loans
Subject to Resale
Restrictions or
Community Land Trust
Ground Lease
(05/01/06)**

For mortgage loans subject to resale restrictions or secured by properties subject to a community land trust ground lease, the servicer must notify the appropriate third party, such as a housing authority, government agency, or community land trust ground lessor, when the borrower defaults or the property is foreclosed, as required by the resale restrictions or the community land trust ground lease.

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Exhibit 1

Exhibit 1: Borrower's Authorization for Counseling (01/31/03)

TO WHOM IT MAY CONCERN:

If I fail to make any monthly mortgage payment as agreed, I understand that the servicer of my mortgage loan may refer me to a third-party counseling organization or a mortgage insurer, which will advise me about finding ways to meet my mortgage loan obligation. I hereby authorize the servicer to release information to such third-party counseling organization or mortgage insurer, and request that the counseling party contact me.

I further hereby authorize the third-party counseling organization or mortgage insurer to make a recommendation about appropriate action to take with regard to my mortgage loan, which may assist the servicer in determining whether to restructure my mortgage loan or to offer other extraordinary services that could preserve my long-term homeownership.

Borrower Signature

Date

Borrower Signature

Date

**Delinquency
Management and Default
Prevention**

Delinquency Prevention

Exhibit 1

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This page is reserved.

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Chapter 4. Special Relief Measures (01/01/09)

Fannie Mae does not want to foreclose a delinquent mortgage loan if there is a reasonable chance of saving the mortgage loan. If the reason for default relates to a temporary condition and the borrower appears to have a reasonable chance of bringing the mortgage loan current, the servicer must pursue a temporary solution using Fannie Mae's special relief provisions.

A servicer may consider special relief options and foreclosure prevention alternatives when a payment default is reasonably foreseeable (imminent) rather than wait for a payment default. In determining whether a payment default is imminent, the servicer must evaluate the borrower's financial condition as well as the condition of and circumstances affecting the property securing the mortgage loan. The servicer also must document the basis on which it makes a determination that a payment default is reasonably foreseeable.

The following is a list of examples of the types of factors the servicer may consider when evaluating whether or not a payment default is imminent. Factors for consideration include, but are not limited to:

- information received from the borrower (for example, changes in employment and other income sources, or family medical status);
- the payment history of the borrower(s) (as reported by a credit bureau) on other indebtedness;
- the loan-to-value (LTV) ratio of the mortgage loan when it was originated;
- an estimate of the current LTV ratio;
- whether the monthly debt service under the mortgage loan has recently changed or will soon change;
- the credit score of the borrower(s); and

- the occurrence of a natural disaster (such as a tornado, hurricane, or flood), terrorist attack, or other catastrophe caused by either nature or a person other than the borrower that:
 - the servicer reasonably believes adversely affects the value or habitability of a mortgaged property; or
 - the servicer reasonably believes adversely affects the borrower's ability to make further payments or payment in full on the mortgage loan.

A default is reasonably foreseeable when the servicer is notified or otherwise becomes aware of an event or factors (including those listed above) that is or are expected to cause the borrower to be in default in the near future, generally within 90 days.

Fannie Mae has several types of special relief provisions to help deserving borrowers who are delinquent. Available types of relief may differ depending on whether the mortgage loan is in an MBS pool (including Pooled from Portfolio mortgage loans) or in Fannie Mae's portfolio. The servicer must be familiar with the terms of each of these provisions. Fannie Mae wants the servicer to use Fannie Mae's relief provisions whenever their use is appropriate. However, Fannie Mae does not expect the servicer to grant relief unless it will result in either bringing the mortgage loan current and keeping it that way or providing the borrower with a reasonable opportunity to avoid foreclosure by selling his or her property. When a servicer grants relief provisions, it remains responsible for making delinquency advances to Fannie Mae throughout the term of the relief, if the mortgage loan is accounted for as a scheduled/actual or scheduled/scheduled remittance type.

Early in the delinquency or when default is determined to be imminent, the servicer must determine the borrower's commitment and capacity to cure the delinquency. If the servicer believes that the borrower should be granted relief, it must

- explain Fannie Mae's relief provisions and the borrower's responsibilities under each;

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Section 401

- obtain any financial information that will be needed to develop the repayment plan; and
- stress the consequences of not meeting the terms of a repayment plan to make sure that the borrower has a complete understanding of the agreement he or she is about to enter into. (also see *Section 203, Letters (01/01/11)*)

The servicer must analyze each case carefully before determining which relief measure is most appropriate for a given borrower.

When establishing repayment terms, the servicer must consider the borrower's financial condition, other obligations, and anticipated future income to make sure that the repayment plan finally agreed to is realistic. Fannie Mae will not object to any reasonable relief plan the servicer develops as long as it does not jeopardize Fannie Mae's lien position or reduce the amount of any future claim that Fannie Mae might file with FHA, HUD, VA, RD, or the mortgage insurer.

**Section 401
Fannie Mae's Workout
Hierarchy (10/20/09)**

Fannie Mae's workout hierarchy recommends the preferred order of consideration for the use of foreclosure prevention options to resolve a delinquency. A servicer must first evaluate a borrower to determine if he or she is eligible for HAMP (refer to *Section 610, Home Affordable Modification Program (04/21/09)*), and, if not, the servicer must then determine whether the borrower is eligible for an alternative foreclosure prevention option based on whether the borrower is experiencing a temporary or permanent financial hardship. Please refer to the Fannie Mae Workout Hierarchy on eFannieMae.com.

**Section 402
Temporary Indulgence
(01/31/03)**

Temporary indulgence is the granting of a 30-day grace period to enable a borrower to repay all past-due installments at once. A servicer does not need to obtain Fannie Mae's approval before granting temporary indulgence, nor does it need to notify Fannie Mae that it has done so.

Temporary indulgence may be granted only under special circumstances when the servicer determines that the borrower will be financially able to bring the account current by paying the delinquent installments within 30 days. Temporary indulgence may be appropriate when

- a sale or rental of the property is pending;

- an insurance settlement is being negotiated;
- assistance from a social agency has been arranged, but funds have not been received;
- additional time is needed to formalize a repayment plan under Fannie Mae's other relief provisions;
- the mortgage payments were lost in transit and need to be traced; or
- time is needed to reapply previous principal prepayments (when that is permitted).

**Section 403
Forbearance (01/01/09)**

Under forbearance, the servicer can agree to reduce or suspend the borrower's monthly payments for a specified period. Forbearance may be offered by itself or in combination with other foreclosure prevention alternatives, such as a combination of forbearance and a repayment plan. Unless otherwise provided in connection with another foreclosure prevention alternative or other agreement, after the forbearance period, the borrower must resume his or her regular monthly payments. For further details on requirements for foreclosure prevention alternatives that combine forbearance and repayment plans, refer to *Section 404, Repayment Plan (01/01/09)*. Forbearance must be considered when the default is the result of

- the borrower's death or the death of a family member who made a significant contribution toward the mortgage payment;
- illness or some natural disaster that the borrower was not insured against;
- a substantial reduction in income that the borrower could not prevent; or
- some other unusual circumstance that warrants the use of a relief provision and is well-documented. (For example, individuals who are not eligible for relief under the Servicemembers Civil Relief Act, but who are nonetheless affected by a state's call-up of members of the National Guard or other state-supported military unit—such as individuals who rent their properties to one of these service members;

reservists who are on part-time active duty; individuals who receive a substantial portion of their mortgage payment from an individual who has been called up, but who is not a party to the mortgage loan, etc.—should be considered favorably. When adapting Fannie Mae’s policy to accommodate the provisions of state-mandated relief for members of a state-supported military unit, the servicer must comply with all of the provisions of the applicable state law—such as those related to eligibility criteria, specific forms of relief, the extent of the relief, etc.—even if the provisions are at variance with Fannie Mae’s usual requirements.)

A borrower who has substantial equity in a property may list it for sale as a means of avoiding foreclosure and the resultant loss of the equity in the property. In such cases, the servicer may grant forbearance during the listing period. The servicer must base its determination on the maximum permitted length of the forbearance period, the value of the property, the amount of the borrower’s equity, the time that will likely be needed to complete the sale of the property considering current market conditions, the amount of any payments the borrower can make during the forbearance period, and the effect that granting the forbearance may have on the likelihood that Fannie Mae would incur a loss if the property is not sold and Fannie Mae has to initiate foreclosure proceedings.

For MBS mortgage loans, the maximum permitted duration of the forbearance period is based on the aggregated number of months in forbearance without a full cure of the delinquency and is determined by the MBS pool issue date without regard to the servicing option or recourse arrangement under which they were purchased or securitized. Accordingly, a servicer must identify and distinguish the pool issue date under which an MBS mortgage loan was pooled and be familiar with the varying servicing requirements. In no event may a forbearance period extend past the last scheduled payment date of the mortgage loan.

For mortgage loans with MBS pool issue dates from June 1, 2007 through December 1, 2008, a servicer may offer forbearance for a maximum term of up to 6 months. Fannie Mae will not approve any request to extend the 6-month maximum duration limit.

For MBS mortgage loans with pool issue dates up to and including May 1, 2007, MBS mortgage loans with pool issue dates of January 1, 2009 and

beyond, and for mortgage loans held in Fannie Mae's portfolio, a servicer may offer forbearance for periods longer than 6 months. The following limitations apply to ensure prudent and consistent application of this rule. The forbearance limitations apply regardless of whether forbearance is offered by itself or in combination with other foreclosure prevention alternatives, such as a combination of forbearance and a repayment plan.

- Generally, servicers should limit forbearance to no more than 6 months.
- Any forbearance arrangement that extends for a period longer than 6 months must be in writing.
- Any forbearance arrangement that extends for a period longer than 12 months must receive prior written approval from Fannie Mae.
- When a servicer decides to grant forbearance when a payment default is reasonably foreseeable but before an actual default has occurred, the following limitations apply:
 - Any initial forbearance period may not exceed 6 months from the date of the first scheduled reduced or suspended payment.
 - The combined period for forbearance and a repayment plan may not exceed 36 months if a servicer initially offers a combination of foreclosure prevention alternatives that includes both forbearance and a repayment plan and, as specified above, the initial forbearance period may not exceed 6 months.
 - After the initial forbearance period has begun, the servicer may grant whatever further foreclosure prevention alternatives it deems appropriate, including extending the initial forbearance and repayment periods, subject to any other limitations that may apply to such foreclosure prevention alternatives (for example, Fannie Mae prior written approval must be obtained if the forbearance arrangement would exceed 12 months).

Examples of circumstances when forbearance longer than 6 months may be appropriate include:

- the property securing the mortgage loan has been impacted by a disaster, including a natural disaster, and the borrower needs additional time to resolve an insurance claim, obtain a grant, obtain new employment, etc.;
- the property is located in an area in which marketing times are excessive and the borrower is trying to sell the property; and
- the borrower has experienced a significant decrease in income but has future prospects of being able to reestablish his/her prior income level.

Whenever a forbearance is required to be in writing, the servicer may enter into a written agreement with a borrower that is executed by both parties or, if permitted and enforceable under applicable law, the servicer may provide the borrower with a letter confirming the terms of their agreement and referencing the meeting or conversation(s) during which the agreement was reached. In the case of a confirming letter that is not signed by the borrower, unless prohibited by law, the servicer must include appropriate language to provide that, by making a payment under or acting in accordance with the terms of the agreement, the borrower is further confirming the borrower's agreement to the terms specified in the confirming letter.

The written agreement or confirming letter must clearly set out the agreement terms including, as applicable:

- the period and amount of reduced or suspended payments and the date on which the forbearance will end,
- the repayment schedule for making additional payments when the borrower resumes regular monthly payments, and
- the date by which the defaults will be cured and the mortgage loan will be brought current under the terms of the repayment plan.

Subject to compliance with applicable law, the servicer must include a provision in the agreement or confirming letter that permits the servicer to

initiate or resume foreclosure if the terms of the agreement are not satisfied by the borrower. Therefore, in the case of forbearance granted to enable the borrower to sell his or her property or refinance his or her mortgage loan as a means of avoiding foreclosure, the agreement or confirming letter must include a provision that permits the servicer to initiate or resume foreclosure proceedings at the end of the forbearance period if the property has not been sold or the mortgage loan has not been refinanced. An agreement for a second-lien mortgage loan must include a provision for automatic termination of the relief plan if the first-lien mortgage loan goes into foreclosure.

Even if a written agreement or confirming letter is not required, the terms of foreclosure prevention alternatives must, at a minimum, be documented on the servicer's system and otherwise recorded in the mortgage loan file it maintains for Fannie Mae.

In any instance in which the servicer is required to obtain Fannie Mae's prior written approval for an extended forbearance period, the servicer must send its recommendation, along with a copy of the forbearance plan, a letter from the borrower documenting his or her financial hardship and requesting assistance, and evidence of the mortgage insurer's or guarantor's approval of the proposed forbearance (if applicable), to its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Solution Center at 1-888-326-6438. As previously stated, however, Fannie Mae will not approve any requests to extend the 6-month maximum duration period for forbearance with respect to MBS mortgage loans with pool issue dates from June 1, 2007 through December 1, 2008.

The servicer must report the execution of a forbearance agreement in the first delinquency status information report it transmits to Fannie Mae after the agreement is executed. When a servicer structures a combination of foreclosure prevention alternatives in an agreement that includes forbearance and a repayment plan, the servicer must use status code 09 during the forbearance period (when monthly payments are reduced or suspended) and status code 12 during the repayment plan period (when regular monthly payments have resumed and additional payments are scheduled to be made to cure the delinquency). Fannie Mae relies on accurate reporting by servicers to track compliance with timing requirements and restrictions.

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For a mortgage loan with a pool issue date from June 1, 2007 through December 1, 2008 to remain in an MBS pool after 6 consecutive months of forbearance, the mortgage loan must have become current or the servicer must report a delinquency status code to indicate that the loan status has changed during or at the end of the 6-month forbearance period (for example, code 12 – repayment plan; code 31 – in probate, code 32 – under military indulgence under the provisions of the Servicemembers Civil Relief Act or applicable state law; code 43 – referred to foreclosure; or codes 59, 65, 66, and 67 – in bankruptcy), or that the servicer is working with the borrower on a foreclosure prevention relief option (for example, code 17 – preforeclosure sale; code 26 – refinance; code 27 – assumption; code 28 – mortgage modification – but the mortgage loan must be removed from the MBS pool before the modification is executed; code 44 – awaiting the completion of a deed-in-lieu of foreclosure), or the servicer has commenced or resumed collection activities leading to foreclosure proceedings after the forbearance (for example, code 42 – delinquent no action). A mortgage loan that continues to have a forbearance code indicating that the mortgage loan is in forbearance for 7 consecutive months or without a delinquency status code in the 7th month after the mortgage loan was reported in forbearance for 6 consecutive months will be removed from the MBS pool.

All MBS mortgage loans (regular servicing and special servicing option mortgage loans) removed from MBS pools will become actual/actual remittance type mortgage loans that Fannie Mae will hold in its portfolio, identifying them by the Fannie Mae loan number, the servicer's loan number, and the property address. A servicer remains responsible for the recourse obligation on a regular servicing option mortgage loan that is removed from the pool and held in Fannie Mae's portfolio. Additionally, a servicer must purchase a regular servicing option mortgage loan that Fannie Mae holds in its portfolio before the servicer agrees to a modification that would affect the term, interest rate, unpaid principal balance (UPB), or other major characteristic of the mortgage loan.

Section 403.01
Payment Reduction Plan
(11/01/09)

The Payment Reduction Plan (PRP) provides a borrower with temporary payment relief while the servicer and the borrower work together to find the appropriate permanent foreclosure prevention solution. Under a PRP, the servicer can reduce a borrower's monthly principal and interest (P&I) payment by up to 30 percent for up to 6 months.

**Section 403.02
PRP Eligibility (11/01/09)**

A mortgage loan is eligible for a PRP if it is a Fannie Mae portfolio mortgage loan or MBS mortgage loan guaranteed by Fannie Mae and all of the following criteria are met:

- The mortgage loan is a first-lien conventional mortgage loan originated no less than 6 months prior to the PRP effective date, as reported by the servicer and upon receipt of first payment.
- The mortgage loan is in default or is at risk of imminent default according to the standards outlined in this *Servicing Guide*.
- The mortgage loan is secured by a one- to four-unit property (including investment properties and second homes).
- The mortgage loan is currently not on a forbearance plan.
- The borrower is ineligible for HAMP.
- The borrower has the ability to make reduced monthly payments of at least 70 percent of the contractual monthly P&I payment and a more permanent foreclosure prevention option cannot be readily determined.
- The property securing the mortgage loan is not condemned.
- If the mortgage loan is in active foreclosure, the date of any scheduled foreclosure sale is more than 45 days after the PRP effective date.
- The mortgage loan is not covered by recourse or indemnification agreements.
- Mortgage loans with borrowers in active bankruptcy proceedings are eligible at the servicer's discretion.

**Section 403.03
PRP Process (11/01/09)**

The PRP is available to borrowers who do not qualify or are not eligible for HAMP and who are either in default or are at risk of imminent default. If a borrower has the willingness and the ability to make reduced monthly payments of at least 70 percent of their contractual monthly P&I payment and a more permanent foreclosure prevention option cannot be readily determined, then a servicer must consider the borrower for the PRP. This program is not available for borrowers who are unable to make reduced

monthly payments of at least 70 percent of their contractual monthly P&I payment. Those borrowers can be considered for a regular forbearance while the servicer evaluates a permanent foreclosure prevention solution; however, the servicer will not receive the PRP incentive under these circumstances.

While the borrower is eligible for the PRP for a maximum of 6 months, the servicer must actively work towards finding a permanent foreclosure prevention solution during this timeframe. The servicer is encouraged to find a solution as early as possible during the 6-month forbearance period, with the expectation that a solution will generally be identified in the first 3 months and then implemented during the latter part of the forbearance period, as borrowers will not be permitted to remain in a delinquent status with no action taken by the servicer upon completion of the PRP term.

When a servicer offers a borrower a PRP, the terms of the PRP offer must indicate that the forbearance will end and foreclosure action will be resumed or commenced as soon as one of the following occurs:

- the borrower fails to make any payment more than 15 days after it is due during the forbearance period,
- the servicer determines that a foreclosure prevention solution is not feasible, even if the borrower is making timely forbearance payments, or
- a foreclosure prevention solution has not been identified by the end of the 6-month forbearance period.

Servicers can enroll the borrower in a PRP while they are exploring other foreclosure prevention strategies provided the PRP does not exceed 6 months. However, a servicer must immediately resume or commence foreclosure proceedings, in accordance with applicable laws, when a borrower fails to make any payment more than 15 days after it is due during the forbearance period or as soon as the servicer determines that a foreclosure prevention solution is not feasible.

**Section 403.04
PRP Workflow (11/01/09)**

The PRP workflow is as follows:

- The servicer must evaluate the borrower's financial circumstances to determine an affordable monthly amount that the borrower can contribute towards the mortgage obligation. If the amount of the borrower's contribution (minus any amounts required for monthly taxes, insurance, and other escrow payments for mortgage loans with escrow accounts) is at least 70 percent or more of the borrower's contractual P&I payment, then the borrower is eligible for PRP at an amount he or she can afford. The borrower must continue to make taxes, insurance, and other escrow payments during the PRP forbearance period.
- If the borrower cannot afford a payment that is at least 70 percent of the current monthly payment, then alternative foreclosure prevention solutions must be considered in accordance with the Fannie Mae workout hierarchy.
- When a borrower has been approved for a PRP, the servicer will communicate the terms and conditions of the PRP to the borrower and, when feasible, offer the borrower the opportunity to make payments via Automated Clearing House (ACH); provided that the borrower must not be charged a fee for such ACH transactions.
- Until further notice, servicers are required to report a PRP as a HomeSaver Forbearance™ (HSF) through Delinquency Reporting via HomeSaver Solutions® Network (HSSN) for the reporting month in which the first PRP payment was received and monthly thereafter to indicate whether the borrower is currently under a PRP plan.
- PRPs will be called HSFs in HSSN, and new cases, including all non-owner occupied mortgage loans, must be submitted under the PRP guidelines provided herein.
- After a servicer has placed a borrower in a PRP, the servicer must actively work towards finding a foreclosure prevention solution and is encouraged to find one as early as possible during the forbearance period.

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- Borrowers will not be permitted to remain in a delinquent status with no action by the servicer upon completion of the PRP 6-month forbearance period. If the borrower fails to make a payment more than 15 days after it is due during the forbearance period, the servicer determines that a foreclosure prevention solution is not feasible at any point during the forbearance, or a foreclosure prevention solution has not been identified by the end of the forbearance period, the servicer must immediately resume or commence foreclosure.

**Section 403.05
PRP Incentive Fee
(11/01/09)**

Servicers will receive a \$200 incentive fee for a PRP upon the successful completion of a permanent foreclosure prevention alternative.

**Section 403.06
Use of Suspense
Accounts and Application
of Payments (11/01/09)**

If permitted by the applicable mortgage loan documents, servicers may accept and hold as “unapplied funds” (held in a tax and insurance custodial account) amounts received that do not constitute a full monthly contractual principal, interest, tax, and insurance (PITI) payment. However, when the total of the reduced payments held as unapplied funds is equal to a full PITI payment, the servicer is required to apply all full payments to the mortgage loan. The servicer must not impose any late charges, penalties, stop payment fees, or similar fees on the mortgage loan during the PRP.

**Section 403.07
Reporting Requirements
(04/01/10)**

The servicer must report delinquency status code 09 – Forbearance during the PRP while evaluating the borrower for a permanent foreclosure prevention solution.

Until further notice, servicers will designate a mortgage loan as a PRP by reporting a “2 – PRP” in the HomeSaver Forbearance Indicator field through Delinquency Reporting via HSSN. Refer to *Chapter 7, Exhibit 3: Delinquency Status Code File Layout*, for file layout. Although PRPs will be called HSFs in HSSN, new cases must be submitted under the PRP guidelines.

**Section 403.08
Mortgage Insurer
Approval (11/01/09)**

Granting forbearance is contingent on the servicer’s ability to ensure the continuation of mortgage insurance coverage. Fannie Mae will pursue blanket delegations of authority from most mortgage insurers so that servicers can grant PRPs without having to obtain mortgage insurer approval on individual mortgage loans to extend the delinquency beyond the date that foreclosure proceedings would otherwise be required to begin. Fannie Mae has posted and will maintain on eFannieMae.com a list

of the mortgage insurers from which it receives a delegated authority agreement for the PRP. Servicers must continue to obtain mortgage insurer approval on a case-by-case basis from any mortgage insurer for which Fannie Mae has not yet received a delegated authority agreement. Servicers must consult their mortgage insurance providers for specific processes related to the reporting of forbearance terms, payment of premiums, payment of claims, and other operational matters in connection with forbearances granted under the PRP.

**Section 404
Repayment Plan
(01/01/09)**

Under a repayment plan, the borrower must immediately make payments in addition to regular monthly payments to cure the delinquency. A servicer must consider a repayment plan when the delinquency resulted from a temporary hardship that no longer appears to be a problem. For MBS mortgage loans, the maximum allowable term of a repayment plan or a combination of forbearance and repayment plan may vary depending on the MBS pool issue date without regard to the servicing option or recourse arrangement under which they were purchased or securitized.

For all MBS mortgage loans with pool issue dates from June 1, 2007 through December 1, 2008, servicers may offer repayment plan terms only up to 18 months from the first day of the month in which the plan commences (its inception). Fannie Mae will not approve any request to extend the 18-month maximum duration limit.

For MBS mortgage loans with pool issue dates up to and including May 1, 2007, MBS mortgage loans with pool issue dates of January 1, 2009 and beyond, and for mortgage loans held in Fannie Mae's portfolio, a servicer may offer a repayment plan for a period longer than 18 months from inception. However, any repayment plan for a period longer than 36 months must receive prior written approval from Fannie Mae.

Generally, a servicer should limit any repayment plan to a period of no more than 12 months. Examples of circumstances when repayment plans longer than 12 months may be appropriate include:

- a borrower who has resolved a temporary hardship and is able to resume making regular monthly payments under the current contractual terms, but who is unable to resolve the arrearage using a repayment plan of 12 months or less; and

- a borrower who has been affected adversely by a disaster, including a natural disaster, and requires a lengthy repayment plan to become current.

When a servicer structures a combination of forbearance and a repayment plan, the agreement must be in writing if the combined period is greater than 12 months or if the period of either forbearance or the repayment plan is more than 6 months. A servicer must receive prior written approval from Fannie Mae before the servicer offers a borrower a combined period greater than 36 months.

For repayment plans less than 6 months from their inception, the repayment plans may be oral agreements; however, the servicer must document the agreement in its mortgage loan files. A formal written agreement is required if the repayment plan is greater than 6 months from its inception. A repayment plan for a second-lien mortgage loan also must include a provision for automatic termination of the relief plan if the first-lien mortgage loan goes into foreclosure.

Whenever a repayment plan is required to be in writing, the servicer may enter into a written agreement with a borrower that is executed by both parties or, if permitted and enforceable under applicable law, the servicer may provide the borrower with a letter confirming the terms of their agreement and referencing the meeting or conversation(s) during which the agreement was reached. In the case of a confirming letter that is not signed by the borrower, unless prohibited by law, the servicer must include appropriate language to provide that, by making a payment under or acting in accordance with the terms of the agreement, the borrower is further confirming the borrower's agreement to the terms specified in the confirming letter.

The written agreement or confirming letter must clearly set out the agreement terms including, as applicable:

- the repayment schedule for making additional payments when the borrower resumes regular monthly payments, and
- the date by which the defaults will be cured and the mortgage loan will be brought current under the terms of the repayment plan.

Subject to compliance with applicable law, the servicer must include a provision in the agreement or confirming letter that permits the servicer to initiate or resume foreclosure if the terms of the agreement are not satisfied by the borrower. Therefore, in the case of forbearance granted to enable the borrower to sell his or her property or refinance his or her mortgage loan as a means of avoiding foreclosure, the agreement or confirming letter must include a provision that permits the servicer to initiate or resume foreclosure proceedings at the end of the forbearance period if the property has not been sold or the mortgage loan has not been refinanced. An agreement for a second-lien mortgage loan must include a provision for automatic termination of the relief plan if the first-lien mortgage loan goes into foreclosure.

Even if a written agreement or confirming letter is not required, the terms of foreclosure prevention alternatives must, at a minimum, be documented on the servicer's system and otherwise recorded in the mortgage loan file it maintains for Fannie Mae.

Repayment plans may require

- monthly payments that are multiples of the regular installment;
- a regular payment one month and multiple payments the next month;
- payments to be made more often than monthly; or
- any other variation in the timing or amount of the payment that will cure the delinquency in the shortest possible time that is appropriate to the particular borrower.

In any instance in which the servicer is required to obtain Fannie Mae's prior written approval for an extended repayment plan, the servicer must send its recommendation, along with a copy of the repayment plan, a letter from the borrower documenting his or her financial hardship and requesting assistance, and evidence of the mortgage insurer's or guarantor's approval of the proposed repayment plan (if applicable), to its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Solution Center at 1-888-326-6438.

Even if a written agreement or confirming letter is not required, the servicer must report its approval of a repayment plan in the first delinquency status information report it transmits to Fannie Mae after the plan is approved. When a servicer structures a combination of foreclosure prevention alternatives in an agreement that includes forbearance and a repayment plan, the servicer must use status code 09 during the forbearance period (when monthly payments are reduced or suspended) and status code 12 during the repayment plan period (when regular monthly payments have resumed and additional payments are scheduled to be made to cure the delinquency). Fannie Mae relies on accurate reporting by servicers to track compliance with timing requirements and restrictions.

Section 404.01
Repayment Plan
Incentive Fee (08/11/08)

Fannie Mae will pay a \$400 fee to servicers for each repayment plan that meets Fannie Mae's criteria and successfully brings a mortgage loan current. In order for a mortgage loan to be eligible for the repayment plan incentive fee, the following eligibility requirements must be met:

- The mortgage loan must be a conventional first- or second-lien mortgage loan for which Fannie Mae bears the risk of loss.
- The mortgage loan must be 60 or more days delinquent when first reported with a delinquency status code 12 – Repayment Plan by the servicer.
- The mortgage loan must be brought current upon the successful completion of the repayment plan.
- Once a repayment plan fee has been paid on a mortgage loan, a 12-month period must elapse from the date the mortgage loan became current before another repayment plan fee will be paid on that mortgage loan.

Fannie Mae will review eligibility for the repayment plan incentive fee and make the final determination based on information provided by the servicer; therefore, servicers need not submit requests for payment of repayment plan incentive fees. Repayment plan incentive fees on eligible mortgage loans will be sent to servicers on a monthly basis.

The following are instances in which repayment plans are not eligible for the repayment plan fee:

- A mortgage loan that is first reported with a delinquency status code 12 and is brought current in the same month is not eligible for the repayment plan incentive fee.
- A mortgage loan that is paid in full or repurchased after the delinquency status code 12 is reported and before the mortgage loan becomes current is not eligible for the repayment plan incentive fee.

The repayment plan may include accrued late charges due when the plan is established between the servicer and the borrower. Servicers are expected to waive late fees accrued during the repayment plan period as long as the terms of the repayment plan are maintained by the borrower.

After a repayment plan is established, the following criteria must be satisfied:

- A servicer must report the repayment plan using HSSN by the second business day of the month following the month the plan was entered into with the borrower.
- A servicer must continue to report each month that the borrower is on a repayment plan until the mortgage loan becomes current, the borrower defaults on the terms of the repayment plan, or the mortgage loan is liquidated.

Fannie Mae will validate eligibility for the repayment plan fee and make the final determination based on information provided by the servicer. Servicers need not submit requests for payment of repayment plan fees.

**Section 405
Military Indulgence
(09/30/05)**

In order to facilitate servicers taking appropriate action in cases where military indulgence is warranted or required, *Part III, Chapter 1, Exhibit 1* provides a consolidated presentation of all of the relevant material on Fannie Mae's specific procedures for providing relief to U. S. service members under the Servicemembers Civil Relief Act and Fannie Mae's additional forbearance policies.

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Section 406

**Section 406
Disaster Relief
(01/01/09)**

A servicer may grant a borrower disaster relief during the period needed to ascertain the facts if a disaster, terrorist attack, or other catastrophe occurs that was caused by either nature or a person other than the borrower and that the servicer reasonably believes may adversely affect either the value or habitability of a mortgaged property or the borrower's ability to make further payments or payment in full on a mortgage loan. Generally, servicers must consult with Fannie Mae before granting disaster-related relief that exceeds 90 days. When a servicer is unable to contact a borrower who may have been impacted by a disaster and the servicer has decided to grant the borrower disaster relief while the servicer attempts to establish contact to ascertain the facts, the servicer must report a delinquency status code of 42 – "Delinquent, No Action" until the servicer is able to contact the borrower and determine an appropriate course of action. Fannie Mae expects, however, that the servicer will be able to establish contact with the borrower within the first 90 days after the disaster occurs.

After determining the facts and circumstances related to a borrower and the mortgaged property, a servicer may determine that a foreclosure prevention alternative is appropriate even though the borrower's mortgage loan is current, if the servicer determines that a payment default is reasonably foreseeable. For example, a servicer may determine that a period of forbearance, consisting of reduced or suspended payments, is appropriate.

**Delinquency
Management and Default
Prevention**

Special Relief Measures

Section 406

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This page is reserved.

Chapter 5. Bankruptcy Proceedings (01/01/11)

When a borrower files for bankruptcy, the servicer (assisted by appropriate legal counsel) must take all actions that are necessary to protect Fannie Mae's interests. One of the ways that Fannie Mae will evaluate a servicer's diligence in protecting Fannie Mae's interest during bankruptcy proceedings will be to measure the extent to which the servicer effectively resolves a bankruptcy by using standard bankruptcy procedures and, when applicable, foreclosure prevention alternatives. Fannie Mae has also developed allowable timelines within which bankruptcy proceedings are expected to be completed. A servicer must be able to provide Fannie Mae with documentation that provides evidence that it took all required actions to mitigate a specific bankruptcy in a timely and appropriate manner. If the servicer is unable to document that it took appropriate actions for a specific bankruptcy and Fannie Mae incurs a loss that is directly attributable to the servicer's failure to properly handle the bankruptcy, Fannie Mae may ask the servicer to "make Fannie Mae whole" or to indemnify Fannie Mae for the amount of Fannie Mae's loss. (also see *Part III, Section 503*; *Part V, Sections 109 and 210*; and *Part VIII, Section 101*)

The servicer must report the initiation of bankruptcy proceedings in the first delinquency status information it transmits to Fannie Mae after it learns that the borrower has filed for bankruptcy (even if the mortgage loan is actually current).

Section 501 Selection of Bankruptcy Attorneys and Avoiding Delays in Case Processing (01/01/11)

The process for selecting bankruptcy attorneys differs depending upon whether a bankruptcy is filed in a jurisdiction in which Fannie Mae has retained attorneys or is filed in a jurisdiction in which Fannie Mae relies upon the servicer to select and retain qualified and experienced attorneys of its choice to handle bankruptcy cases.

In order to limit risks arising from the concentration of the legal work relating to Fannie Mae's delinquent mortgage loans in a single law firm in a jurisdiction, Fannie Mae urges servicers to diversify their referrals of Fannie Mae matters among two or more law firms in each jurisdiction. Fannie Mae monitors the concentration of its legal work and reserves the right to suspend the referral of new cases to attorneys (or to reassign

previously referred cases) in order to regulate concentration, capacity, performance, or for other reasons.

Section 501.01
Fannie Mae–Retained
Attorneys (01/01/11)

For selected jurisdictions, Fannie Mae posts on eFannieMae.com a list of attorneys who are eligible to receive foreclosure and bankruptcy referrals relating to Fannie Mae mortgage loans (the “Retained Attorney List”) and the effective date for mandatory use of the attorneys by servicers in those jurisdictions. For all conventional or government mortgage loans held in Fannie Mae’s portfolio or that are part of an MBS pool serviced under the special servicing option or in a shared-risk MBS pool for which Fannie Mae markets the acquired property, the servicer is required to refer bankruptcy cases to a Fannie Mae–retained attorney included on the Retained Attorney List, in applicable jurisdictions.

Servicers are responsible for checking the Retained Attorney List on eFannieMae.com to ensure they are using the most current list. Servicers must advise the attorney to whom the referral is made that Fannie Mae owns or securitizes the mortgage loan being referred.

The Fannie Mae–retained attorney to whom a foreclosure referral is made will handle any resulting bankruptcy case, and the Fannie Mae–retained attorney to whom a bankruptcy referral is made will handle any foreclosure following resolution of the bankruptcy case, unless Fannie Mae approves a deviation from this policy. Fannie Mae does make one exception to this requirement—servicers may continue to use corporations that are authorized to conduct foreclosures as trustees in Arizona, California, and Washington; however, any resulting bankruptcy case must be referred to an attorney on the Retained Attorney List.

When a servicer refers a bankruptcy case to a Fannie Mae–retained attorney, the servicer is responsible for monitoring all aspects of the attorney’s performance, including foreclosure prevention activities, cure rates, and timeline performance. The servicer is also responsible for providing a complete referral package, any additional documentation, information, or signatures the attorney requests, and for fulfilling all of its other servicing obligations. The servicer will not be required to reimburse Fannie Mae for any losses incurred by Fannie Mae because the attorney failed to properly meet his or her responsibilities, nor will the servicer be subject to the imposition of compensatory fees related to deficiencies in the performance of the attorney—as long as the losses or deficiencies are

unrelated to any failure by the servicer to monitor or manage the performance of the attorney or failure by the servicer to timely provide required or requested documents, information, or signatures to the attorney.

If the servicer selects a Fannie Mae–retained attorney to handle bankruptcy actions for any mortgage loans in regular servicing option MBS pools or shared-risk MBS pools (for which the servicer is responsible for marketing the acquired property), the servicer will be responsible for the terms of the relationship with the attorney and will be fully responsible for monitoring the attorney and accountable for any delays or losses resulting from deficiencies in the attorney’s performance (in accordance with the provisions for servicer-retained attorneys that are discussed in *Section 501.02, Servicer-Retained Bankruptcy Attorneys (01/01/11)*).

Each retained attorney has executed an engagement letter with Fannie Mae which, among other things:

- documents the existence of an attorney-client relationship with Fannie Mae;
- acknowledges Fannie Mae’s right to communicate directly with the attorney and monitor and/or audit the attorney’s handling of cases;
- specifies the attorneys’ fees, imposes limits on costs, and prohibits the payment of outsourcing or referral fees; and
- requires the attorney to directly notify Fannie Mae of non-routine litigation and certain other matters.

In most cases, the retained attorney will also represent the servicer (and may have signed a separate engagement letter with the servicer). Fannie Mae’s engagement letter with the attorney will provide that in the event a conflict of interest arises during the course of representing both the servicer and Fannie Mae, the attorney must notify both the servicer and Fannie Mae of the conflict, and Fannie Mae and the servicer will work together to resolve the conflict.

A servicer must provide appropriate documentation and mortgage loan status data for each bankruptcy case it refers to a bankruptcy attorney. *Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents* includes a description of key servicer/attorney interactions during bankruptcy proceedings. *Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals* includes a list of mortgage loan status information that the servicer must provide to the bankruptcy attorney. Once a case has been referred to a bankruptcy attorney, the servicer must keep the attorney informed about any change in the status of the mortgage loan.

Section 501.02
Servicer-Retained
Bankruptcy Attorneys
(01/01/11)

Until Fannie Mae identifies retained attorneys in all jurisdictions, it will continue to rely on servicers to select and retain qualified and experienced attorneys of their choice to handle bankruptcy matters in accordance with Fannie Mae's requirements in jurisdictions where no Fannie Mae-retained attorney attorneys have been identified.

When a servicer retains its own bankruptcy attorneys, it is critical that the servicer select highly qualified, experienced attorneys to ensure the successful management of all bankruptcy cases in accordance with applicable law and professional standards of conduct. The servicer will be responsible for the terms of the relationship with the attorney and will be fully responsible for monitoring the attorney and accountable for any delays or losses resulting from deficiencies in the attorney's performance.

The attorneys the servicer retains must be able to process bankruptcies in a timely and efficient manner (by quickly obtaining relief from the bankruptcy, when appropriate, so that foreclosure proceedings may be initiated or continued) and to recognize and facilitate foreclosure prevention whenever possible.

The attorneys also must be able to identify special-circumstance bankruptcies, such as those identified in *Section 507, Special Circumstance Bankruptcies (10/17/05)*. The servicer must assess the attorneys' experience in handling these complex legal matters and confirm their willingness and expertise to aggressively defend against them (for the fees, and in the manner, that Fannie Mae specifies). The servicer must make sure that an attorney submits his or her bill to the servicer, not to Fannie Mae. Fannie Mae will reimburse the servicer for the attorneys' fees and expenses (as discussed in *Section 501.04, Reimbursement of Expenses (01/31/03)*).

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Section 501

At a minimum, the servicer must communicate on a monthly basis with any bankruptcy attorney that it retains. The attorney must promptly update the servicer upon every milestone or change in the status of the bankruptcy case and give the servicer a monthly update on the status of every case it is handling for the servicer. The servicer must monitor the attorney's performance in, at least, the following areas—foreclosure prevention activities, cure rates, and timeline performance.

Section 501.03
Allowable Attorney Fees
(01/01/11)

Fannie Mae's schedule of maximum allowable attorney fees for bankruptcy actions applies to both servicer-retained and Fannie Mae-retained attorneys and is included in *Exhibit 3: Allowable Bankruptcy Attorney Fees*. The fee will vary depending on the chapter under which the bankruptcy is filed (and, if applicable, the status of the mortgage loan at the time of the bankruptcy filing). Generally, Fannie Mae will not reimburse the servicer for any attorneys' fees that exceed (or are not permitted within) Fannie Mae's maximum allowable bankruptcy fee schedule—unless the attorney obtains the appropriate excess fee approval from Fannie Mae's National Servicing Organization. Fannie Mae-retained attorneys are required, and have appropriate processes in place, to obtain all needed excess fee approvals. For bankruptcy referrals sent to servicer-retained attorneys, the servicer must ensure that the attorney can comply with Fannie Mae's excess fee process. If necessary, servicer-retained attorneys can request excess fee training by contacting Fannie Mae's National Servicing Organization by e-mail message to excess_fee_request@fanniemae.com.

The servicer is responsible for reviewing and approving the attorneys' fees for services rendered (as well as all related expenses) for both Fannie Mae-retained attorneys and servicer-retained attorneys and for seeking reimbursement from Fannie Mae. All attorneys must submit their statements for all fees and expenses directly to the servicer. Servicers must ensure that fees and expenses charged to borrowers are permitted under the terms of the note, security instrument, and applicable laws and are prorated to reasonably relate to the amount of work actually performed. 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 the guidelines. 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. The servicer also is responsible for filing with the IRS a Statement for Recipients of Miscellaneous Income (IRS Form 1099-MISC) to report the fees it pays to bankruptcy attorneys.

When legally permissible, the servicer must preserve the borrower's obligation to reimburse the servicer for attorneys' fees paid for bankruptcy actions in a way that is in accordance with local bankruptcy rules and all applicable law (particularly since local bankruptcy rules and procedures for approval of attorneys' fees and other applicable law may vary from one jurisdiction to another). One way of preserving the borrower's obligation might be to make sure that the borrower's proposed bankruptcy plan provides for the payment of all legal fees. Another way of preserving the borrower's obligation might be to include the fees as part of the total indebtedness (if applicable law allows that to be done without obtaining approval from the bankruptcy court). If it is not legally permissible to collect bankruptcy attorney fees and costs from the borrower, Fannie Mae will reimburse the servicer for such fees and costs to the extent that services to protect Fannie Mae's interests were actually rendered and the fees and costs charged for them are reasonable and necessary and comply with Fannie Mae's guidelines.

The servicer, its agents, or any outsourcing firms it employs must not charge (either directly or indirectly) any outsourcing fee, referral fee, packaging fee, or a similar fee in connection with any Fannie Mae mortgage loan. Moreover, the amount of any fee charged to any attorney or trustee for technology usage or electronic invoice submission must be reasonable in relation to the benefit received by the attorney.

Section 501.04
Reimbursement of
Expenses (01/31/03)

Fannie Mae will reimburse the servicer for Fannie Mae's share of any out-of-pocket expenses it incurs to pay attorneys' fees and costs or the cost of any required appraisal (or for any advances it has to make to cover escrow deficits) during the bankruptcy proceedings for a whole mortgage loan or a participation pool mortgage loan held in Fannie Mae's portfolio or for an MBS mortgage loan serviced under the special servicing option. The servicer may not deduct its expenses from any payments that are received from the bankruptcy trustee. The servicer may request reimbursement when its expenses have surpassed \$500 or when an advance has been outstanding for at least 6 months, by submitting a *Cash Disbursement Request* ([Form 571](#)).

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Section 502

**Section 502
Bankruptcy
Management Process
(01/01/11)**

The servicer must have written procedures to control and monitor bankruptcy proceedings effectively. The procedures must cover bankruptcies filed under Chapters 7, 11, 12, and 13, foreclosure prevention activities, cure rates, and timeline performance. Among other things, the procedures must address the requirements for

- proactively monitoring bankruptcy filings in order to identify bankruptcies at the time borrowers actually file them;
- establishing a case status and portfolio performance tracking system to permit the proper reporting and analysis of activity for individual cases and to monitor the servicer's overall bankruptcy management process;
- maintaining an individual case file for each mortgage loan that is involved in bankruptcy proceedings;
- referring the case to the bankruptcy attorney promptly;
- filing a proof of claim (either by the servicer or its bankruptcy attorney)—the circumstances under which it is required, how to prepare it, time frame for filing, etc.;
- reviewing proposed payment plans and analyzing the results of the bankruptcy attorney's negotiations to determine that they represent adequate bankruptcy resolution provisions;
- pursuing legal action to obtain early dismissal of the case, stay relief, plan objection, or other relevant proceedings if negotiations have failed;
- determining when the prerequisites for filing motions for bankruptcy relief have been met;
- establishing and maintaining a legal events record to define the status of a case at various times throughout the bankruptcy proceedings and to identify when conditions for additional legal proceedings have been met;
- establishing procedures to ensure that the bankruptcy court and the Chapter 13 bankruptcy trustee are promptly and appropriately notified

when a mortgage loan for which a Chapter 13 bankruptcy has been filed is included in a servicing transfer;

- establishing and maintaining a payment compliance record to define the borrower's and/or bankruptcy trustee's compliance with any payment plan or other court-ordered arrangement, to identify when conditions for additional legal proceedings have been met, and to take appropriate action if the borrower fails to make payments under the plan (including filing a motion to have the automatic stay lifted when the borrower becomes 60 days delinquent under the plan);
- ensuring that the debtor's counsel and bankruptcy trustee are notified upon a change in payment amount due to an escrow analysis when necessary or appropriate;
- initiating foreclosure proceedings or finalizing a foreclosure prevention alternative, if appropriate, promptly following the completion of the bankruptcy proceedings; and
- ensuring compliance with the automatic stay and the co-debtor stay.

There are a number of steps that the servicer will need to perform once it receives notice that a bankruptcy filing has taken place, as well as over the course of the bankruptcy proceedings. There are several public information access services available that enable subscribers to electronically obtain case summaries and docket information to assist in monitoring and controlling bankruptcy cases. *Exhibit 4: Electronic Public Access Providers* includes more information on how to contact two of these services.

Key steps in the bankruptcy management process that must be followed—regardless of the chapter under which the bankruptcy is filed—are discussed in the following *Sections*. Additional guidance on managing bankruptcies that are filed under specific chapters or bankruptcies that represent special-circumstance filings is provided in the remainder of this *Chapter*.

Section 502.01
Confirming Bankruptcy
Information (01/01/11)

Once the servicer determines that a borrower has filed bankruptcy, it must obtain confirmation of the following information: borrower's name, bankruptcy case number, date of filing, the chapter under which the

bankruptcy was filed, the court that has jurisdiction over the case, and the name of the presiding judge.

If the servicer is listed as a creditor in the bankruptcy petition, it should receive a copy of the Notice of Commencement from the Bankruptcy Court. The Notice may include several important dates—such as the date and time for the initial meeting of creditors, the date by which all claims must be filed, the date for the hearing on confirmation of a borrower’s Chapter 13 reorganization plan, and the deadline for objecting to the discharge of a debt or the confirmation of a reorganization plan. The servicer must note in its bankruptcy tracking system all of these important dates and deadlines to ensure that appropriate follow-ups are scheduled to make sure that actions are taken in a timely manner.

Section 502.02
Establishing
Documentation Files
(01/01/11)

The servicer must maintain an individual file for each case that is involved in bankruptcy proceedings, regardless of whether the mortgage loan has a current or delinquent status. That file must include a copy of the borrower’s petition for bankruptcy, the Notice of Commencement, the proof of claim, any reorganization plan, all pleadings and notices, any new appraisal for the security property that the servicer obtained in connection with the bankruptcy, and any correspondence with the borrower’s attorney.

Section 502.03
Referring Case to
Bankruptcy Attorney
(01/01/11)

When a referral is appropriate, the servicer must send a complete referral package to the attorney. The referral package must include all of the legal documents the attorney needs to conduct the bankruptcy proceedings and all necessary information about the status of the property, the borrower, the mortgage loan, and the bankruptcy filing. The servicer also must include in the referral package any relevant information on the current and any prior bankruptcy filings involving the borrower or the subject property (such as plans, pleadings, schedules, and proofs of claims), foreclosure prevention activities, loan collection history, any previous (or current) foreclosure status information, and all information the servicer has regarding the value of the security property (if applicable). (The documents and mortgage loan status data that the servicer must send to the bankruptcy attorney are discussed in *Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents* and *Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals*.)

The servicer must check its records for the mortgage loan carefully to determine whether the borrower has filed for bankruptcy previously. If the records reflect other bankruptcy filings, the servicer must mark the referral package it sends to the bankruptcy attorney as “repeat filer” or “possible bankruptcy abuse” and ask the attorney to confirm whether the borrower’s filing is considered “abusive”—and, if it is, to file appropriate pleadings (such as those addressed in *Section 507.01, Abusive Filers (10/17/05)*).

The timeline for referring a case to a bankruptcy attorney will vary depending on the status of the mortgage loan at the time the bankruptcy case is filed (see *Exhibit 5: Bankruptcy Referral and Completion Timelines* (also see *Section 501, Selection of Bankruptcy Attorneys and Avoiding Delays in Case Processing (01/01/11)*, *Section 501.01, Fannie Mae–Retained Attorneys (01/01/11)*, and *Section 501.02, Servicer–Retained Bankruptcy Attorneys (01/01/11)* for a discussion of the selection of bankruptcy attorneys)

Not previously referred for foreclosure. When a borrower files for bankruptcy, the servicer must refer the mortgage loan to a bankruptcy attorney in accordance with the following schedule:

- Chapter 7 Filings

If the mortgage loan is current or is less than 60 days delinquent and the borrower has filed a Chapter 7 proceeding, the servicer must wait until the mortgage loan becomes 60 days delinquent and then refer the case to a bankruptcy attorney. The servicer must send the referral no later than 2 weeks from the 60th day of delinquency. However, the servicer must refer the case earlier to a bankruptcy attorney if it believes that pleadings filed in the bankruptcy may affect the borrower’s obligations under the terms of the note or mortgage or if expedited relief from stay is otherwise necessary to protect Fannie Mae’s interests (for example, if insurance or property preservation issues warrant expedited relief).

If the mortgage loan is 60 or more days delinquent when the borrower files a Chapter 7 proceeding, the servicer must refer the case to a bankruptcy attorney. The servicer must send the referral no later than 2 weeks after the bankruptcy is filed.

- Chapter 11 Filings

If the mortgage loan is current or delinquent and the borrower has filed a Chapter 11 proceeding, the servicer must refer the case to a bankruptcy attorney. The servicer must send the referral no later than 2 weeks from the date of the bankruptcy filing.

- Chapter 12 or Chapter 13 Filings

If the mortgage loan is current or is less than 60 days delinquent and the borrower has filed either a Chapter 12 or Chapter 13 proceeding, the servicer must wait until the mortgage loan becomes 60 days delinquent and then refer the case to a bankruptcy attorney. The servicer must send the referral no later than 2 weeks from the 60th day of delinquency. (In jurisdictions in which the post-petition mortgage payments are made through the Chapter 12 or Chapter 13 trustee, the servicer must confirm that the debtor is 60 days delinquent in his or her payments to the trustee prior to referring the case to a bankruptcy attorney.) However, the servicer must refer the case earlier to a bankruptcy attorney if it believes that the bankruptcy may affect the borrower's obligations under the terms of the note or mortgage or if it believes that an attorney needs to review the proposed Chapter 12 or Chapter 13 bankruptcy plan due to its complexity or potential effect on the borrower's obligations. The servicer will be held responsible for ensuring that the bankruptcy is appropriately handled prior to the referral to the bankruptcy attorney.

If the mortgage loan is 60 or more days delinquent when the borrower files either a Chapter 12 or a Chapter 13 proceeding, the servicer must refer the case to a bankruptcy attorney. The servicer must send the referral no later than two weeks after the bankruptcy is filed.

Previously referred for foreclosure. When a borrower files for bankruptcy in connection with a mortgage loan that has been previously referred to an attorney (or trustee) for the initiation of foreclosure proceedings, the servicer must immediately notify the attorney (or trustee) of the bankruptcy filing and send any required bankruptcy referral within two weeks from the date of the bankruptcy filing.

- If a Fannie Mae–retained attorney had been conducting the foreclosure proceedings, that attorney will handle the bankruptcy case. The servicer must promptly forward all applicable information to the attorney so that he or she will be able to take all actions necessary to protect Fannie Mae’s interests.
- If a servicer-retained attorney had been conducting the foreclosure proceedings, the servicer may instruct the attorney to take all actions necessary to protect Fannie Mae’s interests if the servicer has concluded that the attorney is qualified to handle the bankruptcy case or the servicer may refer the case to a bankruptcy attorney of the servicer’s choice and instruct that attorney to take all actions necessary to protect Fannie Mae’s interests.
- If a trustee in Arizona, California, or Washington had been conducting the foreclosure proceedings, the servicer must promptly refer the case to an attorney on the Retained Attorney List in the jurisdiction so that he or she will be able to take all actions necessary to protect Fannie Mae’s interests.
- If a trustee in a jurisdiction other than Arizona, California, or Washington had been conducting the foreclosure proceedings, the servicer must refer the case to a bankruptcy attorney of the servicer’s choice and instruct that attorney to take all actions necessary to protect Fannie Mae’s interests.

Should foreclosure proceedings have to be recommenced at some point in a jurisdiction where Fannie Mae has not retained attorneys, the servicer must refer the case back to the foreclosure attorney (or trustee) that was initially handling the foreclosure proceedings in order to avoid duplicative or excessive attorney fees. However, if the servicer believes that the attorney (or trustee) did not properly handle the foreclosure proceedings, the servicer must contact Fannie Mae to request permission to incur the

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additional expense of using a different attorney (or trustee) to process the foreclosure to completion.

The bankruptcy attorney must maintain a case file for each bankruptcy referral it receives. The file must include not only the information provided by the servicer, but also copies of all motions and pleadings that are needed to process and monitor the case.

Section 502.04
Suspending Debt
Collection Efforts
(10/17/05)

The commencement of a bankruptcy case generally results in an automatic stay against all creditor action to collect a debt or action that might interfere with the administration of the debtor's estate. This means that any action to collect on a debt incurred before the filing of the bankruptcy petition, to take possession of the collateral, or to further the creditor's position can be considered a violation of the automatic stay and/or the co-debtor stay in a Chapter 12 or 13 case in which a co-debtor stay exists. Therefore, the servicer must suspend any and all debt collection efforts (including, but not limited to, foreclosure proceedings) immediately upon notification that a bankruptcy has been filed (unless its legal counsel expressly advises it that certain collection efforts may be continued).

If collection efforts or foreclosure proceedings began before the servicer received notice of the bankruptcy filing, the servicer must contact its bankruptcy attorney as soon as possible to determine what actions it may or may not take. To avoid any potential problems, all future contact with the borrower—including foreclosure prevention proposals—should be made through his or her attorney (or, if legally permissible, by providing the attorney with a copy of any correspondence sent to the borrower).

Section 502.05
Bankruptcy Notices and
Filing a Notice of
Appearance (01/01/11)

Section 342 of the Bankruptcy Code authorizes creditors to file a notice of address to be used in any Chapter 7 or Chapter 13 case in which the creditor is involved or in a particular Chapter 7 or Chapter 13 case. Section 342 also gives effect to certain pre-bankruptcy designations of address for correspondence by creditors. Creditors should consider taking advantage of the provisions of Section 342 in order to ensure that they receive proper notices related to bankruptcy cases. After receiving the referral package from the servicer, the bankruptcy attorney must file a Notice of Appearance, which is a request to be placed on the court's master mailing list for the case. This will ensure that the attorney will receive all notices and pleadings related to the case and will have the

opportunity to review them to determine whether they affect Fannie Mae's interest in the mortgage loan.

To ensure that notices related to the bankruptcy case will be promptly given to the appropriate party at the appropriate address and that all payments will be received on time, a servicer must make sure that it notifies the bankruptcy court and the Chapter 12 or Chapter 13 bankruptcy trustee, in compliance with the bankruptcy code and local bankruptcy court rules, when a mortgage loan for which a Chapter 12 or Chapter 13 bankruptcy has been filed is included in a transfer of servicing.

**Section 502.06
Obtaining and Reviewing
Statements and
Schedules (01/01/11)**

An individual seeking bankruptcy protection must file the following pleadings—a Schedule of Assets and Liabilities (which is an itemized list of the debtor's property and debt) and a Statement of Affairs (which is a questionnaire about the debtor's financial affairs)—within 15 days after filing for bankruptcy. Because this information can assist in assessing the ultimate outcome of the case, the bankruptcy attorney should obtain a copy of these documents.

The bankruptcy attorney should review the Schedule of Assets and Liabilities and Statement of Affairs to seek answers to the following questions:

- Are all known assets and known liabilities listed? How do the listed assets or liabilities compare with the information on the original mortgage loan application or the notes taken in connection with the servicer's collection activities or the pursuit of a foreclosure prevention alternative? (The debtor's failure to fully disclose all assets or liabilities may be an indication of fraud or bad faith.)
- What is the reported value of the security property? Has the debtor undervalued the property, possibly to obtain a cramdown? Has the property depreciated in value? Does the borrower have any equity in the property? Are any rents being collected for the security property? (This information is useful in evaluating foreclosure prevention proposals, in addressing potential cramdowns, or, if the borrower has no equity, in determining whether to make a Motion for Adequate Protection Payments.)

- Are there other liens against the security property? Is the property insured? Are there any real estate taxes that are owed? Has the servicer had to advance funds to pay the real estate taxes? (This can be useful in determining the feasibility of the reorganization plan or in addressing any issues regarding title to the property.)
- Is the budget of income and expenses valid and feasible? (If the budget is not feasible, the bankruptcy attorney should file an Objection to Confirmation of the plan based on “feasibility” where practical.) Does the budget support a foreclosure prevention alternative?
- Does the borrower occupy the security property? What are the borrower’s intentions regarding the security property—retention or surrender? (If the borrower intends to surrender the property, it may be possible to have a Consent Order lifting the stay signed rather than having to schedule a hearing.)
- Has the borrower filed for bankruptcy before? If so, how does the current Schedule of Assets and Liabilities compare to the previous Schedules and how does the current budget compare to previous budgets? (This can be useful in identifying fraud or in determining whether there has been a change in the borrower’s circumstances.)

Section 502.07
Reviewing Bankruptcy
Reorganization Plans
(01/01/11)

The servicer (or, when appropriate, its bankruptcy attorney) must obtain a copy of any proposed reorganization plan and review it prior to the confirmation hearing and any deadline to object to confirmation. The review must seek answers to the following questions:

- Does the plan attempt to modify the security deed or mortgage, the note, or the principal balance, interest rate, or maturity date of the mortgage? (If it does, the bankruptcy attorney must file an Objection to the Confirmation or to other Motions filed by the debtor if appropriate.)
- Does the plan include the correct arrearage claim amount and provide for the payment of interest (if permissible to collect)? (If it does not, the bankruptcy attorney must file an Objection to the Confirmation.)
- Does the plan provide for the arrearage claim to be paid in a reasonable period of time in accordance with local rules and practices?

(If it does not, the bankruptcy attorney must file an Objection to the Confirmation.)

- When is the first post-petition payment to take place? Is that consistent with local rules and practices? (The plan should not provide for the trustee to receive post-petition payments unless local rules and practices require that.) If the security property is located in a jurisdiction that allows the trustee to receive both the pre-petition and post-petition mortgage payments—and the confirmation hearing is not held within 45 days of the meeting of creditors—the bankruptcy attorney should consider requesting interim payments by filing a Motion for Adequate Protection Payments (covering the period from the date the petition was filed through the date of the confirmation hearing), if permitted by the bankruptcy court.
- Does the plan provide for attorneys' fees? (If it does not, the bankruptcy attorney must file an Objection to the Confirmation if appropriate.)

Section 502.08
Preparing and Filing a
Proof of Claim (01/01/11)

A creditor generally is not required to file a Proof of Claim for a Chapter 7 bankruptcy unless it appears that there will be assets available for distribution to creditors (or the bankruptcy attorney has expressly advised that a Proof of Claim must be filed). For a Chapter 11 bankruptcy, a creditor is required to file a Proof of Claim only if the debtor failed to list the creditor's claim in the Schedule of Assets and Liabilities or if a listed claim is disputed, contingent, or unliquidated (although Fannie Mae requires the filing of a claim to confirm or verify the correct amount of the indebtedness in all cases). The Notice of Commencement for a Chapter 13 bankruptcy generally specifies the date by which a Proof of Claim must be filed. As a matter of practice, the servicer or its bankruptcy attorney should file a Proof of Claim (when required) as soon as possible. For example, in some jurisdictions, it is advisable to file the Proof of Claim for a Chapter 13 bankruptcy before the first meeting of creditors since the trustee examines claims and establishes payment procedures at that meeting—and, if a creditor's claim is not already on file, the payment terms may be affected.

Either the servicer or the bankruptcy attorney will need to prepare and file the Proof of Claim within the deadline established by the court. (A suitable form for a Proof of Claim, and directions for filing it, are typically

included on the back of the Notice of Commencement.) Courts around the country have established various rules for filing Proofs of Claim. A proof of claim that is not in compliance with local requirements may cause a delay in payment, the filing of a claim objection, a denial of a pre-petition arrearage claim, or delay in the receipt of post-petition payments. Therefore, it is advisable to consult with an attorney who is familiar with local practice regarding the filing of Proofs of Claim.

Section 502.09
Attending Initial Meeting
of Creditors (01/31/03)

Under all chapters of the Bankruptcy Code, a meeting of creditors is generally held within 45 days after an order for bankruptcy relief is entered. The purpose of this meeting is to give creditors and the bankruptcy trustee an opportunity to examine the debtor under oath about the assets and liabilities of the bankruptcy estate. A creditor's attendance at this initial meeting gives the debtor a clear signal that the creditor plans to actively participate in the bankruptcy process; therefore, Fannie Mae urges that either the servicer or the bankruptcy attorney attend this meeting whenever possible.

Before deciding not to attend the initial meeting of creditors, the servicer and/or the bankruptcy attorney should consider the potential benefits of attending the meeting, the possible consequences that not attending will have on Fannie Mae's interests, and the presence of any special circumstances under which Fannie Mae requires attendance at the meeting.

Benefits gained from attendance at the initial meeting of creditors include (among other things) having the ability to determine the debtor's intentions about a security property and the opportunity to have the debtor execute a reaffirmation agreement if he or she wants to retain the property; investigating whether there are grounds for objecting to the confirmation of a reorganization plan, questioning the feasibility of the plan, or proving fraud or "bad faith"; presenting a Proof of Claim for consideration in the development of a reorganization plan; assessing the debtor's ability to reorganize; obtaining information about the receipt of rental income, thus having advance notice about the need to file an objection to the use of "cash collateral"; being able to alert the trustee about deficiencies in a reorganization plan, prior filings involving the same collateral, or problems related to discharging the debt; and providing an opportunity to develop and finalize a foreclosure prevention alternative (such as a mortgage loan modification or repayment plan).

The debtor's answers to the preliminary questions raised at the initial meeting of creditors may give rise to additional concerns. When that is the case, the bankruptcy attorney should explore the possibility of obtaining an order from the bankruptcy court authorizing a broader examination of the debtor's financial affairs under Rule 2004 of the Federal Rules of Bankruptcy Procedure.

Section 502.10
Monitoring Borrower
Payments and Critical
Dates (01/01/11)

The servicer must keep accurate records of the payments it receives from the borrower before, during, and after the bankruptcy process to ensure that both pre-petition and post-petition payments are made on time and are properly accounted for in accordance with Fannie Mae's standard servicing requirements, the borrower's contractual obligations, and the rules of the bankruptcy court. The servicer must keep the bankruptcy attorney informed about the borrower's payment record.

The servicer also must maintain a legal event record (including dates) that indicates the status of the case at various stages in the bankruptcy process.

A servicer must make sure that the bankruptcy court and the Chapter 12 or Chapter 13 bankruptcy trustee are appropriately notified when a mortgage loan for which a Chapter 12 or Chapter 13 bankruptcy has been filed is included in a servicing transfer. The servicer must ensure that future notices related to an open Chapter 12 or Chapter 13 bankruptcy case will be promptly given to the appropriate party at the appropriate address and that all claim payments will be received on time.

Section 502.11
Foreclosure Prevention
Opportunities (01/01/11)

Given the increased importance of foreclosure prevention in connection with bankruptcy filings, the servicer's bankruptcy staff must be knowledgeable about Fannie Mae's overall foreclosure prevention practices. Fannie Mae's foreclosure prevention alternatives include the following items, which servicers must consider in each bankruptcy case:

- Forbearance, which provides a temporary reduction or suspension of payments which must be immediately followed by an arrangement to cure the delinquency (refer to *Section 403, Forbearance (01/01/09)*);
- Repayment Plan, which requires borrowers with temporary hardships to immediately make payments in addition to regular monthly payments to cure the delinquency (refer to *Section 404, Repayment Plan (01/01/09)*);

- Modification pursuant to HAMP, which permits servicers to offer borrowers in bankruptcy sustainable monthly payments through a uniform loan modification process (refer to *Section 610, Home Affordable Modification Program (04/21/09)*);
- PRP, which permits borrowers who are not eligible for or who do not meet the terms of HAMP, but have the willingness and ability to make reduced monthly payments of at least 70 percent of the borrower's contractual monthly P&I payment and for whom a more permanent foreclosure prevention alternative cannot readily be determined (refer to *Section 403.01 Payment Reduction Plan (11/01/09)*);
- Non-HAMP modification, which permits borrowers with permanent hardships to obtain changes to the interest rate, interest and expense capitalization, and mortgage loan term to cure a delinquency (refer to *Section 602, Mortgage Modifications (01/01/09)*);
- Preforeclosure sale, which permits delinquent borrowers with permanent hardships to sell the property prior to a foreclosure sale resulting in a payoff of less than the total amount owed on the mortgage loan and the release of the mortgage lien (refer to *Section 604, Preforeclosure Sales (01/31/03)*); and
- Deed-in-lieu of foreclosure, which permits delinquent borrowers with permanent hardships to voluntarily transfer title to the property to Fannie Mae to satisfy the mortgage loan and avoid foreclosure (refer to *Section 606, Deeds-in-Lieu of Foreclosure (01/31/03)*).

The particular foreclosure prevention alternative to be utilized in a given bankruptcy case will depend upon, among other things, the type of bankruptcy case, the stage of the bankruptcy case, local practices and procedures, and the particular circumstances of the borrower and the property. When required, Fannie Mae approval for a foreclosure prevention alternative may be sought through HSSN. Trustee and Bankruptcy Court approval must also be obtained when required.

A servicer's bankruptcy monitoring process must include procedures for identifying foreclosure prevention opportunities, and the servicer and the bankruptcy attorney must work together to pursue these opportunities during all phases of the bankruptcy process. The servicer must ask the

bankruptcy attorney to send it a monthly report about the foreclosure prevention efforts that are pursued during the handling of a specific bankruptcy case.

As discussed in *Section 502.06, Obtaining and Reviewing Statements and Schedules (01/01/11)*, the borrower's Statement of Affairs and Schedule of Assets and Liabilities are good sources of information that the servicer and the attorney can use for identifying foreclosure prevention opportunities.

When the borrower is contractually delinquent, the bankruptcy attorney must initially contact the borrower's counsel to discuss the different foreclosure prevention alternatives that might be suitable for the borrower. (If counsel does not represent the borrower, the bankruptcy attorney may contact the borrower directly.) Fannie Mae also urges the bankruptcy attorney to attend the initial meeting of creditors if doing so would increase the possibility of arranging a successful foreclosure prevention alternative. If the borrower expresses an interest in pursuing a foreclosure prevention alternative, the bankruptcy attorney must work with the servicer and the borrower's counsel to discuss the details of the various alternatives and select the most appropriate foreclosure prevention alternative.

If a non-HAMP modification is implemented with respect to a borrower in a Chapter 7 case, the servicer should solicit the borrower for a reaffirmation agreement, but a completed reaffirmation is not a condition to a modification.

If a non-HAMP modification is implemented with respect to a borrower who has received a Chapter 7 discharge but has not reaffirmed the mortgage debt, the modification agreement must make clear that the lender is not seeking to collect the debt as a personal liability of the borrower. This may be accomplished by using the following addendum to the modification agreement:

“Notwithstanding anything to the contrary contained in the Loan Modification Agreement, the parties hereto acknowledge the effect of a discharge in bankruptcy that has been granted to the Borrower prior to the execution hereof and that the Lender may not pursue the Borrower for personal liability. However, the parties acknowledge that the Lender retains certain rights, including but not limited to the right

to foreclose its lien under appropriate circumstances. The parties agree that the consideration for this agreement is the Lender's forbearance from presently exercising its rights and pursuing its remedies under the Security Instrument as a result of the Borrower's default of its obligation there under. Nothing herein shall be construed to be an attempt to collect against the Borrower personally or an attempt to revive personal liability."

If a presale or deed-in-lieu of foreclosure is implemented with respect to a borrower in bankruptcy, the servicer should not solicit or require a cash contribution or promissory note. In addition, the servicer must not purport to preserve the right to pursue a deficiency claim following a short sale approved for a borrower in bankruptcy.

Section 502.12
Delays in the Bankruptcy
Process (01/01/11)

The bankruptcy timelines in this *Chapter* represent the time by which Fannie Mae expects a routine bankruptcy proceeding to have been concluded, given the applicable legal requirements. Fannie Mae recognizes that there are a variety of issues that may cause delays in completing bankruptcy cases. Examples include but are not limited to situations in which: (1) the borrower is performing in accordance with an adequate protection order or stipulation, (2) a bankruptcy trustee is attempting to sell the property securing the mortgage loan, or (3) jurisdictional constraints are present.

Fannie Mae will be monitoring the servicer's management of the bankruptcy process based on the time frames outlined in this *Chapter* by regularly reviewing bankruptcy files. The servicer is responsible for ensuring that all pre-petition and post-petition payments are properly applied and monitored in accordance with all applicable laws and *Section 506.02, Pre-Petition and Post-Petition Payments (01/01/11)*.

If there appears to have been a delay in completing the bankruptcy process and the servicer is unable to provide a reasonable explanation for the delay, Fannie Mae may require the servicer to pay a compensatory fee. In addition, the servicer may be required to pay a compensatory fee for any losses incurred as a result of the servicer's failure to properly apply and monitor payments during the bankruptcy process.

The servicer will be responsible for any delays attributable to the servicer in all cases and for delays attributable to the bankruptcy attorney in all

cases handled by servicer-retained attorneys. The servicer will not be held responsible for timeline delays attributable to the bankruptcy attorney in cases referred to a Fannie Mae–retained attorney—as long as the delays are unrelated to any failure by the servicer to monitor or manage the performance of the attorney or failure by the servicer to timely provide required or requested documents, information, or signatures to the attorney.

Compensatory fees will take into consideration the outstanding principal balance of the mortgage loan, the applicable pass-through rate, the length of the delay, and any additional costs that are directly attributable to the delay.

**Section 503
Managing Chapter 7
Bankruptcies (01/01/11)**

When a Chapter 7 bankruptcy is filed, the court appoints a trustee to liquidate all of the nonexempt assets in which the debtor has equity. The debtor surrenders those assets to the trustee and ultimately receives a discharge from personal liability for the debt. The trustee collects, liquidates, and distributes the assets to the various creditors based on their statutory priority.

The servicer must report a Chapter 7 bankruptcy filing to Fannie Mae with the first delinquency status information it transmits after a borrower has filed (even if the mortgage loan is contractually current), using a delinquency status code 65 with the appropriate effective date, which is the bankruptcy filing date. (This same code will need to be reported to Fannie Mae each month until the bankruptcy is resolved.) The servicer should remove the mortgage loan from bankruptcy status only after the automatic stay is terminated, the case is dismissed, or the borrower receives a discharge and the trustee abandons all interest in the security property. After the bankruptcy is released, the servicer must replace the delinquency status code for bankruptcy, by reporting to Fannie Mae any new code that is needed to accurately describe the latest status of the mortgage loan (as discussed in *Chapter 7, Delinquency Status Reporting*). (also see *Part V, Sections 109 and 210.01*)

The timeline for completing a Chapter 7 bankruptcy case for a mortgage loan that was current or less than 60 days delinquent when the borrower filed bankruptcy is two months and two weeks from the 60th day of delinquency. The timeline for completing a Chapter 7 bankruptcy case for a mortgage loan that was 60 or more days delinquent or in foreclosure

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when the borrower filed bankruptcy is two months and two weeks from the date of the bankruptcy filing.

Case completion for a Chapter 7 bankruptcy proceeding is defined as the termination of the automatic stay, the case being dismissed or closed, or when the borrower receives a discharge and the trustee abandons all interest in the secured property.

Section 503.01
Current Mortgage Loan
(01/01/11)

The key to the successful management of a Chapter 7 bankruptcy involving a current mortgage loan is to closely monitor the case and take appropriate action, when necessary, to ensure that no pleadings are filed or other actions taken that would adversely affect Fannie Mae's security interest in the property. For example, if the debtor intends to retain possession of the property, the servicer should attempt to enter into a Reaffirmation Agreement with the debtor. The servicer must closely monitor the payment status of the mortgage loan and, if it becomes 60 days delinquent, refer it to a bankruptcy attorney within two weeks from the 60th day of delinquency.

Section 503.02
Delinquent Mortgage
Loan (01/01/11)

The key to the successful management of a Chapter 7 bankruptcy involving a delinquent mortgage loan is determining the borrower's intentions for the security property as soon as possible and obtaining either payments or bankruptcy relief in a timely manner. The bankruptcy attorney generally can determine the borrower's intentions by reviewing the Statement of Intention.

- If the borrower intends to surrender the security property, the bankruptcy attorney must attempt to obtain relief from the automatic stay by requesting a court order as expeditiously as possible. (The court order should enable the servicer to proceed with the foreclosure action.) When the Chapter 7 trustee opposes a Motion for Relief from Stay because of concerns about the debtor's equity in the property, the bankruptcy attorney should request that a deadline be established for the trustee to market and sell the property and that the stay be lifted if this deadline is not met.
- If the borrower intends to retain possession of the security property, the bankruptcy attorney must work with the court, the borrower's counsel, and the servicer to pursue a foreclosure prevention alternative.

When the automatic stay is terminated or the case is dismissed or the borrower has received a discharge coupled with a Trustee Abandonment of the property, the servicer must immediately send any required breach letter to the borrower (if it was not sent previously) and refer the mortgage loan to an attorney or trustee to initiate (or resume) foreclosure proceedings, still keeping in mind the possibility of arranging some foreclosure prevention alternative. Failure to do so may result in the servicer having to pay a compensatory fee.

**Section 504
Managing Chapter 11
Bankruptcies (01/01/11)**

When a Chapter 11 bankruptcy is filed, the debtor attempts to formulate a plan of reorganization that provides for the repayment of the creditors. Generally, the debtor remains in control of his or her affairs as a debtor-in-possession and has most of the same powers and duties of a court-appointed trustee. (Most Chapter 11 bankruptcy filings involve business entities, although individuals have the right to file for bankruptcy under that chapter.)

The servicer must report the bankruptcy filing for either a current or delinquent mortgage loan to Fannie Mae with the first delinquency status information it transmits after it learns about the filing, using a delinquency status code 66 with the appropriate effective date, which is the bankruptcy filing date. (This same code will have to be reported to Fannie Mae each month until the bankruptcy is resolved.) For cases filed before October 17, 2005, the servicer should remove the mortgage loan from bankruptcy status only after the stay has been lifted, the case has been dismissed, or an Order of Confirmation has been entered. For cases filed on or after October 17, 2005, the servicer should remove the mortgage loan from bankruptcy status only after the stay has been lifted, the case has been dismissed, or the debtor has been granted a discharge. After the bankruptcy is resolved, the servicer must replace the delinquency status code for bankruptcy, by reporting to Fannie Mae any applicable new code that is needed to accurately describe the latest status of the mortgage loan (as discussed in *Chapter 7, Delinquency Status Reporting*).

**Section 504.01
The Reorganization Plan
(01/01/11)**

The key to the successful management of a Chapter 11 bankruptcy—regardless of whether the mortgage loan is current or delinquent—is ensuring that Fannie Mae’s interests are adequately protected pending the filing of the reorganization plan. For this reason, the servicer must refer a Chapter 11 case to a bankruptcy attorney within two weeks of the filing of the bankruptcy case and direct that the attorney file a Notice of

Appearance. Once the proposed Plan of Reorganization (which describes the terms for repayment of all claims against the debtor) is filed, the bankruptcy attorney must review it and the Disclosure Statement (which describes the effect of the proposed reorganization plan on creditors and the ability for the plan to be performed, and compares the proposal to the results that would probably be obtained under a Chapter 7 proceeding for the same individual). The review of these documents is critical since they will reveal whether the reorganization plan seeks to modify the terms of the mortgage loan. A borrower's request for a cramdown is non-routine litigation which must immediately be reported to Fannie Mae via e-mail to nonroutine_litigation@fanniemae.com and bankruptcy_administration@fanniemae.com. The attorney must actively participate in the plan confirmation process and file an objection to any plan that modifies the rights Fannie Mae has under the security instruments or that is not otherwise in Fannie Mae's best interest. When appropriate, the bankruptcy attorney may even object to the Disclosure Statement in order to preview the court's ruling on an important issue or to prevent the confirmation of the plan. In cases in which the debtor will not receive a discharge upon confirmation of the reorganization plan, the attorney must attempt to negotiate termination of the automatic stay upon confirmation of the reorganization plan. (also see *Section 504.03, Servicing after Confirmation of Plan (01/01/11)* for a discussion of the automatic stay issue)

Section 504.02
Delinquent Payments
(10/17/05)

If a borrower is contractually delinquent, the servicer must contact the bankruptcy attorney to discuss whether it is practical to file a Motion for Relief, a Motion for Adequate Protection Payments, and/or a Motion for Sequestration of Rental Income (if the property is being rented). When there is proof that the debtor has no equity in the security property and that the property is not necessary for the debtor's reorganization, the bankruptcy attorney must request relief from the automatic stay. If the delinquent mortgage loan is released from bankruptcy without an Order of Confirmation being issued, the servicer may immediately send any required breach letter to the borrower (if it had not been sent previously) and refer the mortgage loan to an attorney or trustee to initiate (or resume) foreclosure proceedings, still keeping in mind the possibility of arranging some foreclosure prevention alternative.

**Section 504.03
Servicing after
Confirmation of Plan
(01/01/11)**

When a reorganization plan that modifies the original terms of a mortgage loan is confirmed, the servicer must send either the mortgage loan modification documents or a copy of the reorganization plan that sets out the modified terms of the mortgage loan to Fannie Mae's designated document custodian or the third-party document custodian (as applicable).

- The servicer should not report the terms of a modification as a result of a Chapter 11 plan confirmation through HSSN. Instead, the servicer must report the terms of the modification to Fannie Mae via e-mail to bankruptcy_administration@fanniemae.com and work with Fannie Mae to make appropriate changes to Fannie Mae's investor reporting system records. With respect to special servicing option MBS mortgage loans, no changes should be made to the terms of the mortgage loans in Fannie Mae's records until after Fannie Mae reclassifies the mortgage loan as a portfolio mortgage loan. (Generally, Fannie Mae will change its investor reporting system records to reflect the secured portion of the debt and establish a receivable account for the unsecured portion of the debt. Other changes also may be made, depending on the remittance type. The servicer should remit payments for the secured debt as regular remittances, and payments for the unsecured debt as special remittances.)
- The servicer must also report the modification in the next delinquency status information that it transmits to Fannie Mae after the Order of Confirmation is entered. Delinquency status code 28 must be used if the debtor received a discharge upon confirmation of the reorganization plan or the automatic stay has otherwise been terminated, and delinquency status code 66 must be used if the debtor did not receive a discharge upon confirmation of the reorganization plan and the automatic stay has not otherwise been terminated.
- With respect to any special servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, Fannie Mae may reclassify such MBS mortgage loan as a Fannie Mae portfolio mortgage loan following the earlier of (a) confirmation of a plan that modifies the terms of the MBS mortgage loan or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that

period. With respect to any special servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, Fannie Mae may reclassify such MBS mortgage loan as a Fannie Mae portfolio mortgage loan after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. The mortgage loan already may appear on Fannie Mae's list of delinquent mortgage loans due for reclassification and, if not, the servicer must contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to request that the mortgage loan be added to the reclassifications scheduled for the month in which the plan is confirmed (or the following month if opportunity to do so in the current month has expired).

- With respect to any regular servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, the servicer may purchase such MBS mortgage loan following the earlier of (a) confirmation of a plan that modifies the terms of the MBS mortgage loan or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. With respect to any regular servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, the servicer may purchase such MBS mortgage loan after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. A regular servicing option MBS mortgage loan that has been repurchased from its MBS pool is not eligible for redelivery.
- A special or regular servicing option MBS mortgage loan in MBS issued prior to June 1, 2007 that is current (or has not been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan)) in the month in which the Order of Confirmation is entered will remain in its MBS pool. In the case of those mortgage loans or any other any mortgage loan

The automatic stay in Chapter 11 cases generally terminates by operation of law when the debtor receives a discharge or the case is dismissed. In chapter 11 cases filed before October 17, 2005, the Bankruptcy Code provided that debtors generally received a discharge upon confirmation. In such cases, the debtor's receipt of a discharge upon confirmation generally had the effect of immediately terminating the automatic stay, and, upon default by the debtor under the terms of the plan, the servicer could initiate (or resume) foreclosure proceedings.

In Chapter 11 cases filed on or after October 17, 2005, the Bankruptcy Code provides that debtors generally will not receive a discharge until completion of all payments under the plan. Thus, unless the Court, for cause, orders that the debtor is discharged upon confirmation, the automatic stay will remain in effect after confirmation until the debtor receives a discharge (either upon the completion of all payments under the plan or earlier in the Court's discretion after certain required distributions have been made) or the case is closed or dismissed. In cases in which the automatic stay remains in effect following confirmation, the stay can be lifted or the case can be dismissed if the debtor defaults under the provisions of the reorganization plan. If the borrower becomes 60 days delinquent in making the payments required under the reorganization plan, the servicer must either refer the case to a bankruptcy attorney within two weeks of the 60th day of delinquency or, if already referred, advise the bankruptcy attorney to seek relief from the automatic stay or a dismissal of the case (in accordance with local bankruptcy rules and practices). The servicer is responsible for ensuring that all previous payments have been properly applied and for verifying that the borrower is 60 days delinquent before sending the referral. When the automatic stay is lifted or the case is dismissed for a delinquent mortgage loan, the servicer must immediately send any required breach letter to the borrower (if it was not sent previously) and refer the mortgage loan to an attorney to initiate (or resume) foreclosure proceedings, still keeping in mind the possibility of arranging some foreclosure prevention alternative.

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**Section 505
Managing Chapter 12
Bankruptcies (01/01/11)**

When a Chapter 12 bankruptcy is filed, a “family farmer debtor” attempts to formulate a plan of reorganization that enables him or her to retain possession of the property and provides for a repayment plan to pay off the creditors. (Only a small percentage of bankruptcy cases are filed under Chapter 12.)

The key to the successful management of a Chapter 12 bankruptcy—regardless of whether the mortgage loan is current or delinquent—is assessing the feasibility of the borrower’s reorganization plan and requesting relief from the automatic stay and/or a dismissal of the case (if the plan is not feasible or the borrower fails to make payments as proposed under the plan). Because there will not be that many of these filings for Fannie Mae–owned or Fannie Mae–securitized mortgage loans, each case must be handled according to its specific circumstances. The servicer (together with the bankruptcy attorney, if the case is referred) must decide the actions that need to be taken, and, if necessary, coordinate with a local counsel who has more experience in processing these types of bankruptcy filings.

The servicer must report the bankruptcy filing for either a current or delinquent mortgage loan to Fannie Mae with the first delinquency status information it transmits after a borrower has filed for bankruptcy (even if the mortgage loan is contractually current), using a delinquency status code 59 with the appropriate effective date, which is the bankruptcy filing date. (This same code will have to be reported to Fannie Mae each month until the bankruptcy is resolved.) The servicer should remove the mortgage loan from bankruptcy status only after the stay has been lifted, the case dismissed, or the bankruptcy discharged.

The timeline for completing a Chapter 12 bankruptcy case for a mortgage loan that was current or less than 60 days delinquent when the borrower filed bankruptcy is five months and two weeks from the 60th day of delinquency (or from the date of referral to a bankruptcy attorney, whichever occurs first). The timeline for completing a Chapter 12 bankruptcy case for a mortgage loan that was 60 or more days delinquent or in foreclosure when the borrower filed bankruptcy is five months and two weeks from the date of the bankruptcy filing.

Case completion for a Chapter 12 bankruptcy proceeding is defined as the termination of the automatic stay, the case being dismissed or closed,

when the trustee abandons all interest in the secured property, or when the Chapter 12 plan is confirmed.

After confirmation of a Chapter 12 plan, if the mortgagor becomes 60 days delinquent in making payments pursuant to the plan, the servicer must send a new referral to the bankruptcy attorney. The servicer must send the referral no later than two weeks from the 60th day of delinquency. The servicer is responsible for ensuring that all previous payments have been properly applied and for verifying that the borrower is 60 days delinquent before sending the referral. The timeline for completing the case under these circumstances is two months and two weeks from the 60th day of delinquency.

**Section 506
Managing Chapter 13
Bankruptcies (01/01/11)**

When a Chapter 13 bankruptcy is filed, the debtor attempts to reorganize his or her financial affairs by proposing a repayment arrangement that dedicates all of his or her disposable income over a specified period of time to the repayment of creditors that were owed money before the bankruptcy petition was filed. A court-appointed trustee supervises the bankruptcy by monitoring all aspects of the case and by collecting and disbursing plan payments to the creditors.

The servicer must report the bankruptcy filing for either a current or delinquent mortgage loan to Fannie Mae with the first delinquency status information it transmits after a borrower has filed for bankruptcy (even if the mortgage loan is contractually current), using a delinquency status code 67 with the appropriate effective date, which is the bankruptcy filing date. (This same code will have to be reported to Fannie Mae each month until the bankruptcy is resolved.) The servicer should remove the mortgage loan from bankruptcy status only after the stay has been lifted, the case dismissed, or the bankruptcy discharged. (also see *Part V*, *Sections 109.02* and *210.02*)

**Section 506.01
The Reorganization Plan
(01/01/11)**

The key to the successful management of a Chapter 13 bankruptcy—regardless of whether the mortgage loan is current or delinquent—is assessing the feasibility of the borrower’s reorganization plan and requesting relief from the automatic stay and/or a dismissal of the case (if the plan is not feasible or the borrower fails to make mortgage payments as provided by the plan). The attorney should review the borrower’s Statement of Affairs and Schedule of Assets and Liabilities to verify that the borrower’s reorganization plan is not only feasible, but also is being

proposed in good faith. The plan generally must not modify the terms of the mortgage loan in any way; it should result in the full repayment of the mortgage loan arrearage (including any applicable costs) within a reasonable period of time (based on local court rules and practices) and provide for repayment of the proper claim amount (which is the amount required to fully reinstate the mortgage loan, including all recoverable interest and charges).

If the terms of the reorganization plan are unacceptable—and the borrower is not willing to amend the plan to adequately address the unacceptable provisions—the bankruptcy attorney must file an Objection to Confirmation of the plan or a Motion to Dismiss the case. Reasons for filing an objection or a request for dismissal may include, among other things, the failure of the plan to provide for complete repayment of all arrearages within five years (or within a lesser period if local practice allows dismissal for plans that fail to provide for repayment within a shorter time frame), the failure of the borrower to make post-petition mortgage payments, a lack of feasibility in the terms of the plan, a bad faith filing (multiple bankruptcies involving the same property), or inclusion of an improper provision for modifying the terms of the mortgage loan (a cramdown) as part of the plan.

Section 506.02
Pre-Petition and Post-
Petition Payments
(01/01/11)

The reorganization plan must require the borrower to remain current on all contractual mortgage obligations coming due after the date of the bankruptcy petition, while curing the pre-petition arrearages under the terms of the repayment arrangement. Generally, the trustee will hold all pre-confirmation plan payments until the case is confirmed. Some jurisdictions also require that post-petition payments be sent to the trustee rather than directly to the creditors. (Whenever possible, the bankruptcy attorney should request the court to order that the post-petition payments be sent to the servicer instead of the trustee.) The servicer will need to monitor and separately account for all pre-petition and post-petition payments. If the payments are sent to the trustee, the servicer must access the trustee's website or contact the trustee's office to verify the receipt of specific payments.

The servicer must maintain detailed records of any payments it receives during the confirmation process—the type of payment (pre-petition or post-petition), the amount received, the receipt date, the source of the payment, and the allocation of the payment (principal, interest, late

charges, etc.). The servicer should generally hold any pre-petition payments it receives as “unapplied” funds until an amount equal to the full monthly (or biweekly) payment that is due under the mortgage note is available for application to the mortgage loan balance. However, if the court requires the payments to be applied under the terms of the repayment plan, the servicer must apply the payments in its records as required. During the confirmation process, the servicer must satisfy Fannie Mae’s standard remittance requirements for the remittance type of the mortgage loan, advancing funds when required for scheduled interest and, if applicable, scheduled principal.

Once the plan is confirmed, the servicer must continue to monitor the timely receipt of all payments for the pre-petition arrearages and any post-petition payments that come due.

- If the mortgage loan is one that Fannie Mae holds in its portfolio, the servicer must satisfy Fannie Mae’s standard remittance requirements (based on the applicable remittance type for the mortgage loan) throughout the term of the reorganization plan. This requires the servicer to maintain several sets of records during the term of the reorganization plan—one that reflects application of the payments under the terms of the reorganization plan, one that reflects application of the payments under the original terms of the mortgage loan, and one that reflects application of any scheduled interest that must be remitted to Fannie Mae (if the mortgage loan has a scheduled/actual remittance type).
- With respect to any regular servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, the servicer may purchase such MBS mortgage loan following the earlier of (a) confirmation of a plan that modifies the terms of the MBS mortgage loan or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. With respect to any regular servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, the servicer may purchase such MBS mortgage loan after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure

during that period. A regular servicing option MBS mortgage loan that has been repurchased from its MBS pool is not eligible for redelivery.

- A delinquent special servicing option MBS mortgage loan can be reclassified as an actual/actual remittance type portfolio mortgage loan through Fannie Mae's standard reclassification procedures for delinquent special servicing option MBS mortgage loans at the times specified below. With respect to any special servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, the loan may be reclassified following the earlier of (a) confirmation of a plan that modifies the terms of the MBS mortgage loan or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. With respect to any special servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, the loan may be reclassified after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. The mortgage loan already may appear on Fannie Mae's list of delinquent mortgage loans due for reclassification and, if not, the servicer must contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to request that the mortgage loan be added to the reclassifications scheduled for the month in which the plan is confirmed (or the following month if opportunity to do so in the current month has expired).
- So long as any mortgage loan (regardless of servicing option or delinquency status) remains in its MBS pool, the servicer must report and remit to Fannie Mae each month the P&I as scheduled under the original terms of the mortgage loan. This requires the servicer to maintain multiple sets of records during the term of the reorganization plan. (also see *Part VI, Chapter 3*)

The automatic stay can be lifted if the debtor defaults under the provisions of the reorganization plan that require him or her to keep post-petition payments current. In addition, the case can be dismissed if the debtor is clearly unable to make the pre-petition payments required by the

reorganization plan. If the borrower becomes 60 days delinquent in making the contractual post-petition payments or 60 days delinquent in making the pre-petition payments as required under the reorganization plan, the servicer must either refer the case to a bankruptcy attorney within two weeks of the 60th day of delinquency or, if already referred, advise the bankruptcy attorney to seek relief from the automatic stay or a dismissal of the case (in accordance with local bankruptcy rules and practices). (In jurisdictions in which the post-petition mortgage payments are made through the Chapter 12 or Chapter 13 trustee, the servicer must confirm that the debtor is 60 days delinquent in his or her payments to the trustee prior to referring the case to a bankruptcy attorney.) When the automatic stay is lifted or the case is dismissed for a delinquent mortgage loan, the servicer must immediately send any required breach letter to the borrower (if it was not sent previously) and refer the mortgage loan to an attorney to initiate (or resume) foreclosure proceedings, still keeping in mind the possibility of arranging some foreclosure prevention alternative.

The timeline for completing a Chapter 13 bankruptcy case for a mortgage loan that was current or less than 60 days delinquent when the borrower filed bankruptcy is five months and two weeks from the 60th day of delinquency (or from the date of referral to a bankruptcy attorney, whichever occurs first). The timeline for completing a Chapter 13 bankruptcy case for a mortgage loan that was 60 or more days delinquent or in foreclosure when the borrower filed bankruptcy is five months and two weeks from the date of the bankruptcy filing.

Case completion for a Chapter 13 bankruptcy proceeding is defined as the termination of the automatic stay, the case being dismissed or closed, when the trustee abandons all interest in the secured property, or when the Chapter 13 plan is confirmed.

After confirmation of a Chapter 13 plan, if the mortgagor becomes 60 days delinquent in making payments pursuant to the plan, the servicer must send a new referral to the bankruptcy attorney. The servicer must send the referral no later than two weeks from the 60th day of delinquency. The servicer is responsible for ensuring that all previous payments have been properly applied and for verifying that the borrower is 60 days delinquent before sending the referral. (In jurisdictions in which the post-petition mortgage payments are made through the Chapter 12 or Chapter 13 trustee, the servicer must confirm that the debtor is 60 days

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delinquent in his or her payments to the trustee prior to referring the case to a bankruptcy attorney.) The timeline for completing the case under these circumstances is two months and two weeks from the 60th day of delinquency.

**Section 507
Special Circumstance
Bankruptcies (10/17/05)**

Certain types of bankruptcies require either a different type of expertise or a greater degree of coordination than the average bankruptcy. Bankruptcies that fall into this category include those involving an abusive filer (an individual or a group of individuals who make multiple bankruptcy filings for the same security property), one or more individuals who have a fractional interest in the security property because the property owner conveyed the interest to delay foreclosure proceedings, a borrower who is pursuing a cramdown or modification of the terms of the note or mortgage, a borrower who uses the security property as an investment property, a borrower who has a balloon mortgage, a borrower who has several properties that secure Fannie Mae–owned or Fannie Mae–securitized mortgage loans, a borrower who files for bankruptcy after the title to the property is acquired at a foreclosure sale, and a borrower who is the subject of cross-border insolvency proceedings.

**Section 507.01
Abusive Filers (10/17/05)**

The Bankruptcy Code restricts a debtor's ability to obtain more than one discharge within certain time periods. For example, a debtor may receive only one discharge under Chapter 7 every eight years. A debtor, however, may generally file for bankruptcy at any time under any of the bankruptcy chapters even if he or she is not eligible for a discharge. A case filed under Chapter 11 may be dismissed if a court determines that the filing was not made in good faith and there was no intent to reorganize; however, the debtor may subsequently attempt to file another bankruptcy under Chapter 11 or any other chapter for which he or she is eligible. Generally, a case filed under Chapter 13 may be dismissed at any time, with there being no bars against refiling and commencing a new case after the dismissal of the old one.

When a borrower files for bankruptcy relief that affects the same security property more than once or commits other abusive acts (such as fraudulently obtaining the mortgage loan), he or she may be referred to as an abusive filer. There are several ways to address the actions of an abusive filer, including the following provisions of the Bankruptcy Code:

- Section 109(g) (which bars the debtor from filing a new bankruptcy petition for 6 months if he or she (1) is found to have willfully failed to abide by the orders of the court or to prosecute a case or (2) dismissed a case voluntarily after a motion for relief from the automatic stay was filed);
- Section 362(b)(21) (which provides that the automatic stay does not prohibit foreclosure in a case filed in violation of Section 109(g) or in a case filed in violation of a prior order of a bankruptcy court);
- Section 362(c)(3) (which provides for the expiration of the automatic stay 30 days after the filing of certain cases involving repeat filers unless the stay is extended by the bankruptcy court upon a finding of good faith);
- Section 362(c)(4) (which provides that no automatic stay arises upon the following filing of certain cases involving repeat filers unless a stay is imposed by the bankruptcy court upon motion by a party in interest and a showing of good faith); and
- Section 362(d)(4) (which provides for relief from the automatic stay and two-year “In Rem” relief in cases involving schemes to delay, hinder, and defraud creditors, including transfers of full or partial ownership of the property or multiple bankruptcy filings affecting the property, provided that the order entered by the bankruptcy court is recorded in compliance with applicable state laws governing notices or interests or liens in real property).

Within two weeks after a borrower files for bankruptcy, the servicer must check its records for the mortgage loan to determine whether a previous bankruptcy has been filed. If the servicer’s records reflect other bankruptcy filings by the borrower, it must refer the case to its bankruptcy attorney immediately (and mark the referral package as “repeat filer” or “possible bankruptcy abuse”). On receiving information about an abusive

filer, the attorney must closely monitor the status of the case and prepare any pleadings that are appropriate, including the following:

- An Objection to a Motion for Continuation of the Automatic Stay pursuant to Section 362(c)(3) (to prevent the continuation of the automatic stay in a case involving a repeat filer);
- An Objection to a Motion to Order the Stay to Take Effect pursuant to Section 362(c)(4) (to prevent a stay from being imposed in a case involving a repeat filer);
- A Motion to Confirm that No Stay is in Effect pursuant to Section 362(c)(4);
- An Objection to a Motion to Obtain Relief from an “In Rem” order previously entered pursuant to Section 362(d)(4);
- A Motion for Relief from Automatic Stay pursuant to Section 362(d)(4) (for cases involving schemes to delay, hinder and defraud creditors, including transfers of full or partial ownership of the property or multiple bankruptcy filings affecting the property; any orders obtained pursuant to Section 362(d)(4) must be immediately recorded in compliance with applicable state laws governing notices or interests or liens in real property so that they will be binding in future cases involving the same property for a two-year period);
- A Motion for Relief from Co-Debtor Stay pursuant to Section 1301;
- A Motion for “In Rem” Relief (to bar any person from filing another case in the future affecting the security property) and a Motion for “Prospective” Relief (to prevent the borrower from refiling in the future);
- A Motion for Sequestration of Rental Income in connection with a security property that is used for investment purposes (to prohibit the debtor from using any rental income received from the security property for any purpose other than making payments toward his or her debt without first obtaining the bankruptcy court’s permission);

- A Motion to Annul the Automatic Stay to Confirm Foreclosure Sale, if the servicer was unaware that the borrower had filed bankruptcy and conducted a foreclosure sale (Rather than voiding the foreclosure sale in connection with an “abusive” filing, the court may simply lift the stay retroactively and uphold the foreclosure sale.);
- An Objection to the Discharge in connection with a Chapter 7 bankruptcy that involves fraud (to object to the entire discharge or to the dischargability of the debt); and
- An Objection to Confirmation of Chapter 13 Plan and a Motion to Dismiss in connection with a Chapter 13 bankruptcy in which the reorganization plan appears to be infeasible or offered in bad faith or for which there has been no change in the debtor’s circumstances since the last bankruptcy filing. (The objection should detail the facts of all previous bankruptcy filings and the abusive nature of the present filing and list the grounds for declaring the plan to be infeasible, the bad faith, or the lack of change in circumstances.)

**Section 507.02
Individuals with Fractional
Interests in a Security
Property (10/17/05)**

A borrower may convey a fractional interest in a property that secures a Fannie Mae–owned or Fannie Mae–securitized mortgage loan to one or more individuals to delay the initiation of foreclosure proceedings. Each of the individuals holding a fractional interest in the property could file a petition for bankruptcy, thus delaying foreclosure and postponing the repayment of the debt indefinitely. When it appears that a fractional interest in a property has been conveyed solely for this purpose, the bankruptcy attorney should prepare a Motion for Relief from Automatic Stay pursuant to Section 362(d)(4), if appropriate. Any orders obtained must be immediately recorded in compliance with applicable state laws governing notices or interests or liens in real property so that they will be binding in future cases involving the same property for a two-year period.

**Section 507.03
Cramdowns of the
Mortgage Debt (01/01/11)**

A bankruptcy cramdown is the act of obtaining confirmation of a reorganization plan over the objection of the creditors. A cramdown of the mortgage debt is an attempt to involuntarily modify any of the terms of the security deed, mortgage, or note by court order. This modification could include a change to the UPB, interest rate, monthly payment amount, or maturity date of the mortgage or the bifurcation of the claim into secured and unsecured portions (with the secured portion equal to the value of the security property and the unsecured portion equal to the difference

between the unpaid mortgage loan balance and the value of the property). While bankruptcy law generally prohibits the modification of a mortgage loan that is secured by a debtor's principal residence, it does recognize mortgage modifications in a limited number of situations—such as when the mortgage loan is secured by an investment property; when the mortgage loan is secured by other collateral in addition to the debtor's principal residence and incidental property (as those terms are defined in the Bankruptcy Code); or when the mortgage loan will mature within five years after the date the debtor filed bankruptcy. However, even in the limited number of situations in which mortgage modifications would otherwise be permitted, they are prohibited by Section 1325(a)(9) if the creditor holds a purchase money security interest and the secured indebtedness was incurred within one year before the bankruptcy filing. Moreover, even if a mortgage modification is permissible, the plan must provide for the creditor to retain its lien until either the underlying debt has been paid in full or the debtor has received a Chapter 13 discharge.

When the servicer learns that a bankruptcy filing may involve a cramdown, it must immediately refer the case to a bankruptcy attorney if the case was not previously referred (and mark the referral package as “cramdown” or “involuntary loan modification”). A borrower's request for a cramdown is non-routine litigation which must immediately be reported to Fannie Mae via e-mail to nonroutine_litigation@fanniemae.com and bankruptcy_administration@fanniemae.com. Fannie Mae must be consulted with respect to all strategy involving cramdowns and will make the final determination of how to respond to a borrower's request for cramdown.

When an appraisal is required to oppose a cramdown request, the servicer must work closely with the bankruptcy attorney in selecting the appraiser to make sure that the appraiser is sufficiently familiar with the issues involved in complex bankruptcy matters and has experience in testifying about these issues in court.

The bankruptcy attorney should attend the initial meeting of creditors for all bankruptcy cases involving cramdowns. The attorney should question the debtor about his or her valuation of the property, the budget, and the proposed plan payments to ascertain whether there are grounds for objecting to the plan based on its lack of feasibility. The attorney also

should attempt to determine whether the debtor is receiving any rental income from the property. If the debtor is receiving rental income, the attorney should consider filing a Motion for Sequestration of Rental Income to request the bankruptcy court to determine how the rental income (or “cash collateral”) will be utilized.

With Fannie Mae’s prior approval, the bankruptcy attorney also may conduct discovery with respect to the debtor’s valuation of the property, the debtor’s finances, and the rental income for the property, including requesting the production of documents, requesting admissions of fact, and serving interrogatories on the debtor and his or her counsel. If the meeting of creditors and other methods of discovery are not sufficient to obtain meaningful information, the bankruptcy attorney should consider conducting a broader examination of the debtor’s financial affairs under Rule 2004 of the Federal Rules of Bankruptcy Procedure. The bankruptcy attorney also should consider filing a Motion for Adequate Protection Payments to request that interim disbursements of payments be made during the dispute phase of the cramdown proceeding that occurs prior to the confirmation of the reorganization plan.

The bankruptcy court determines the amount of a secured claim that it will allow for confirmation purposes through a valuation hearing. The bankruptcy attorney must review the debtor’s proposed valuation of the security property and compare it to the estimated value from the appraisal report that the servicer obtains for the property. The bankruptcy attorney must then—after consultation with Fannie Mae—proceed as follows:

- When the appraisal report that the servicer obtains indicates that the value of the security property is equal to or less than the debtor’s valuation—and it otherwise appears that the reorganization plan will be feasible—the bankruptcy attorney must begin to negotiate a possible settlement, stipulation, or workout arrangement. Fannie Mae’s prior approval is required for any settlement agreement or stipulation. A settlement agreement or stipulation must establish the amount of the secured claim and should include a provision that the stay will be lifted or the case will be dismissed (possibly without a hearing) if the borrower defaults in a mortgage payment under the cramdown plan at any time. A settlement must also address the borrower’s need to make payments for maintaining real estate taxes, mortgage insurance, and hazard insurance throughout the bankruptcy proceedings. If it does not

appear that the reorganization plan is feasible, the bankruptcy attorney should only stipulate as to the valuation and other issues, reserving the right to file an Objection to Confirmation of the reorganization plan.

- When the appraisal report that the servicer obtains indicates that the value of the property is greater than the debtor's valuation, the bankruptcy attorney generally should file an Objection to Confirmation of the reorganization plan and/or an Objection to the borrower's Motion to Determine Secured Status pursuant to 11 USC § 506(a). The bankruptcy attorney should take a very firm stance with respect to the settlement of any valuation or confirmation issues. Settlement terms should be similar to those discussed above. Fannie Mae's prior approval is required for any settlement agreement or stipulation. On occasion, Fannie Mae may request that the bankruptcy attorney pursue extended litigation related to the cramdown. In such cases, Fannie Mae will advise the servicer and the bankruptcy attorney about the additional fees and costs Fannie Mae is willing to pay.

If the valuation or confirmation hearing results in a ruling that is adverse to Fannie Mae's interests, the bankruptcy attorney must analyze the case and consult with Fannie Mae to determine whether an appeal might be appropriate.

Application of payments during confirmation process. When a cramdown is being sought, the court may sometimes order that any payments (both pre-petition and post-petition) made during the confirmation process be applied in accordance with the proposed terms of the reorganization plan. In other cases, only the pre-petition payments will need to be made under the terms of the reorganization plan and the post-petition payments will be those due under the terms of the mortgage note.

Since the treatment of the different payments may vary, the servicer must maintain detailed records for any payments it receives—the type of payment (pre-petition or post-petition), the amount received, the receipt date, the source of the payment, and the allocation of the payment (principal, interest, late charges, etc.). To ensure that the payments are properly accounted for and monitored, the servicer may need to maintain several sets of records—one showing the application of pre-petition payments, one showing the application of post-petition payments, and one showing the application of payments under the original terms of the

mortgage (as full installments of P&I become available for application). The servicer must also be able to account for any scheduled interest (and, if applicable, principal) that must be remitted to Fannie Mae.

When payments are sent to the servicer during the confirmation process, the servicer generally should hold them as unapplied funds until an amount equal to the full monthly (or biweekly) payment that is due under the mortgage note is available for application to the mortgage loan balance. However, if the court requires the payments to be applied under the terms of the repayment plan, the servicer must apply the payments in its records as required. In either instance, the servicer's remittance to Fannie Mae must satisfy Fannie Mae's standard remittance requirements (based on the remittance type of the mortgage loan). The servicer may not deduct its expenses from any payments the trustee forwards to it.

Confirmation of reorganization plan. With respect to any regular servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, the servicer may purchase such MBS mortgage loan following the earlier of (a) confirmation of a plan that modifies the terms of the MBS mortgage loan or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. With respect to any regular servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, the servicer may purchase such MBS mortgage loan after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. A regular servicing option MBS mortgage loan that has been repurchased from its MBS pool is not eligible for redelivery.

A delinquent special servicing option MBS mortgage loan can be reclassified as an actual/actual remittance type portfolio mortgage loan through Fannie Mae's standard reclassification procedures for delinquent special servicing option MBS mortgage loans at the times specified below. With respect to any special servicing option MBS mortgage loan in MBS issued on or after June 1, 2007, the loan may be reclassified following the earlier of (a) confirmation of a reorganization plan that provides for a cramdown of the mortgage debt or (b) the loan having been in a continuous state of delinquency for at least four consecutive monthly

payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. With respect to any special servicing option MBS mortgage loan in MBS issued prior to June 1, 2007, the loan may be reclassified after the loan has been in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure during that period. The mortgage loan already may appear on Fannie Mae's list of delinquent mortgage loans due for reclassification and, if not, the servicer must contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to request that the mortgage loan be added to the reclassifications scheduled for the month in which the plan is confirmed (or the following month if opportunity to do so in the current month has expired).

So long as any mortgage loan (regardless of servicing option or delinquency status) remains in its MBS pool, the servicer must report and remit to Fannie Mae each month the P&I as scheduled under the original terms of the mortgage loan.

Payments after confirmation of reorganization plan. When the bankruptcy court confirms a reorganization plan that provides for a cramdown of the mortgage debt, the servicer will no longer need to account for pre-petition and post-petition payments separately, but it will need to separately account for payments to the secured and unsecured portions of the debt that are made under the repayment plan. (The servicer must not make any permanent changes to the mortgage terms by actually modifying the mortgage loan documents.)

The servicer's accounting system for recording payment applications for a confirmed cramdown must keep track of the mortgage payments as follows: (1) interest rate, monthly payment, and due date for the secured portion of the debt; (2) interest rate, monthly payment, and due date for the unsecured portion of the debt; and (3) the original terms of the mortgage note and the application of payments under those terms. The court may rule that any payments made during the confirmation process must be credited against the amount of the secured portion of the debt. If this happens, the servicer may need to adjust its records (and Fannie Mae's) to reallocate the payments between the secured and unsecured

portions of the debt. The servicer also must track the payment of ongoing taxes and hazard insurance.

If the borrower misses two consecutive payments for the secured portion of the debt or if the borrower fails to maintain current tax or hazard insurance obligations, the servicer must immediately notify the bankruptcy attorney and request that a Motion for Relief from Stay or a Motion to Dismiss be filed.

Notifying Fannie Mae about status of cramdown petitions. The servicer must submit a *Chapter 13 Bankruptcy Reporting Form* ([Form 975](#)) at various times to keep Fannie Mae fully informed about the status of bankruptcy cramdowns that involve any Fannie Mae mortgage loans. [Form 975](#) must be submitted to Fannie Mae via e-mail to nonroutine_litigation@fanniemae.com and bankruptcy_administration@fanniemae.com. [Form 975](#) must be submitted to Fannie Mae:

- when the servicer first becomes aware of the request for cramdown (attaching a copy of both the borrower's request for cramdown and any valuation the servicer has obtained);
- when the court approves (or rejects) a request for a cramdown (attaching a copy of the confirmed reorganization plan, when applicable);
- when the borrower or the bankruptcy attorney files an appeal with either the district, circuit, or appellate court (and again later when the court rules on the appeal);
- when a borrower for whom the court approved a cramdown misses the second consecutive payment for the secured portion of the debt under a confirmed reorganization plan; and
- when the borrower successfully completes the confirmed reorganization plan and the debtor receives a discharge (attaching a copy of the discharge if applicable).

The servicer should not report the terms of a cramdown modification through HSSN. Instead, the servicer must report the terms of the

modification to Fannie Mae via e-mail to bankruptcy_administration@fanniemae.com and work with Fannie Mae to make appropriate changes to Fannie Mae's investor reporting system records. With respect to special servicing option MBS mortgage loans, no changes should be made to the terms of the mortgage loans in Fannie Mae's records until after Fannie Mae reclassifies the mortgage loan as a portfolio mortgage loan. (also see *Part VI, Chapter 3*)

(Generally, Fannie Mae will change its investor reporting system records to reflect the secured portion of the debt and establish a receivable account for the unsecured portion of the debt. Other changes also may be made, depending on the remittance type. The servicer must remit payments for the secured debt as regular remittances, and payments for the unsecured debt as special remittances.)

Section 507.04
Mortgage Loans Secured
by Investment Properties
(07/01/97)

"Cash collateral" is cash that is acquired by a debtor during bankruptcy proceedings that is subject to the lien of a secured creditor. When a mortgage instrument that includes a provision for assignment of rents was properly recorded before the commencement of a bankruptcy, any rental payments received for an investment property may be considered cash collateral. Therefore, when the bankruptcy attorney receives a referral for a case that involves an investment property, he or she must confirm that the security instrument includes an assignment of rents provision and, if it does, file a Motion for Sequestration of Rental Income to prohibit the debtor from using any rental income without the bankruptcy court's permission.

Section 507.05
Balloon Mortgage Loans
(01/01/11)

When a borrower who has a balloon mortgage loan files for bankruptcy before the balloon maturity date, the servicer's ability to ensure the continuation of mortgage insurance coverage by offering a conditional refinancing or a conditional modification to the borrower prior to the balloon maturity date can be affected. Before referring a balloon mortgage loan to a bankruptcy attorney, the servicer must determine whether the balloon maturity date will occur while the bankruptcy action is pending (which will include any repayment period under a confirmed reorganization plan). If the maturity date will occur while the bankruptcy is pending, the servicer must inform the bankruptcy attorney of that fact when it refers the case. In addition, the servicer must notify the applicable mortgage insurer to confirm whether the bankruptcy proceedings will have any effect on the mortgage insurance coverage if they continue beyond the

balloon maturity date. This is particularly important in connection with a Chapter 13 bankruptcy since the confirmed reorganization plan may permit the mortgage debt to be paid over a five-year period.

The bankruptcy attorney must thoroughly review the reorganization plan for either a Chapter 11 or a Chapter 13 bankruptcy to determine whether an Objection to Confirmation should be filed. For example, an Objection must be filed if a Chapter 11 reorganization plan modifies the terms of the mortgage loan to extend beyond the balloon maturity date or if a Chapter 13 reorganization plan extends the mortgage loan beyond the balloon maturity date and does not call for the debtor to satisfy any additional obligations (for accrued interest and escrow deposits) beyond the balloon maturity date. In addition, the bankruptcy attorney must make sure that any additional expenses (such as interest, real estate taxes, hazard insurance premiums, and mortgage insurance premiums) that may accrue after the balloon maturity date are appropriately treated in the plan if the plan extends the repayment beyond the balloon maturity date.

If a Chapter 13 reorganization plan involving a balloon mortgage loan is confirmed and it is later discovered that the balloon note would have matured during the life of the plan, the servicer must notify Fannie Mae via e-mail to nonroutine_litigation@fanniemae.com.

**Section 507.06
Multiple Fannie Mae
Mortgage Loans
(01/31/03)**

Occasionally, an individual who files for bankruptcy may own several properties that secure Fannie Mae–owned or Fannie Mae–securitized mortgage loans. This makes monitoring and controlling the bankruptcy process complicated since the mortgage loans may be serviced by different servicers, each of which retains a different legal counsel. In such cases, there may be a duplication of work by counsel or differing opinions about the proper way to protect Fannie Mae’s interest in the mortgage loans.

Before referring a case to a bankruptcy attorney, the servicer must make a reasonable effort to determine whether the borrower has any other outstanding mortgage debts on any other real property that is included in the bankruptcy estate. (One way of doing this is to order a credit report for the borrower to see if other mortgage debts appear on the report.) If such debts exist, the servicer must try to identify the servicers of the mortgage loans and initiate contact with them to determine whether Fannie Mae has an interest in the mortgage loans. In any instance in which Fannie Mae has an interest in more than one mortgage loan for which the security property

is part of the same borrower's bankruptcy estate, the servicer must coordinate its efforts with those of the other servicers and/or their attorneys. Whenever possible, the servicers should have the same bankruptcy attorney handle the proceedings for all of the mortgage loans. If that is not possible, the servicers must emphasize to their individual bankruptcy attorneys the need to work closely with the other bankruptcy attorneys to ensure that Fannie Mae's interests are adequately protected.

Section 507.07
Post-Foreclosure Filings
(01/01/11)

On occasion, a borrower may file for bankruptcy after Fannie Mae has acquired a property through a foreclosure sale. Since a foreclosure generally eliminates any rights a borrower had in the acquired property, there may be no need to refer a case involving a post-foreclosure bankruptcy filing to a bankruptcy attorney, to file a Proof of Claim, or to review a proposed reorganization plan (other than to ensure that it does not seek to overturn the foreclosure sale). There also may be instances in which the bankruptcy was filed before the foreclosure sale, but the servicer did not receive notification about the filing until after the date of the foreclosure sale. In either instance, the servicer must contact Fannie Mae's National Property Disposition Center via e-mail at npdc_assetrecovery@fanniemae.com within two business days of the date the servicer learns that the borrower has filed for bankruptcy to make sure that Fannie Mae is aware of the filing.

If the property is not occupied, Fannie Mae will make a determination about whether or not the case needs to be assigned to an attorney. If the property is occupied and eviction proceedings are necessary, Fannie Mae will notify the attorney it selected to handle the eviction proceedings about the need to file either a Motion for Relief from Stay (and to cease all efforts to evict an occupant from the property until the relief is granted) or a Motion to Annul the Automatic Stay (so that the foreclosure sale can be validated). As soon as the relief is granted or the sale is validated, the attorney will immediately reschedule the date for eviction of the occupants from the property.

Fannie Mae will select and monitor the attorney that will handle the proceedings for a post-foreclosure bankruptcy filing and will advise the attorney of the applicable fee when it refers the case. In most instances, Fannie Mae will pay the attorney that handles the post-foreclosure bankruptcy directly. However, in some circumstances, Fannie Mae may request that the servicer pay the attorney fee and any applicable costs,

request payment from Fannie Mae, and file the Statement for Recipients of Miscellaneous Income (IRS Form 1009-MISC). The servicer must pay the attorney the amount billed for the post-foreclosure bankruptcy filing, up to a maximum amount of \$500. Should the attorney submit a bill showing an attorney fee that is more than \$500, the servicer should not pay it unless the attorney also provides a copy of a letter from Fannie Mae that authorizes payment of the higher fee. If the attorney fails to provide a copy of Fannie Mae's authorization, the servicer must contact Fannie Mae's National Property Disposition Center via e-mail at npdc_assetrecovery@fanniemae.com to confirm whether the higher amount may be paid.

**Section 507.08
Cross-Border Insolvency
Proceedings (10/17/05)**

On occasion, a borrower may be the subject of an insolvency proceeding in a foreign country and related bankruptcy proceedings may be commenced in the United States under Chapter 15 of the Bankruptcy Code. In the event of the initiation of a cross-border insolvency proceeding under Chapter 15 of the Bankruptcy Code, the servicer must contact Fannie Mae via e-mail to nonroutine_litigation@fanniemae.com to obtain specific instructions about how such a filing should be reported to Fannie Mae and to discuss the handling of the matter, including legal fees and costs.

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Exhibit 1

Exhibit 1: Expected Servicer/Attorney Interactions and Required Documents (01/01/11)

This *Exhibit* includes key instances of expected servicer/attorney interaction and a list of the documents that must be sent to the attorney when a case is referred for bankruptcy legal action.

Expected Servicer/Attorney Interaction

Key instances of servicer and attorney interaction related to bankruptcy proceedings are listed below; however, this list is not meant to be all-inclusive:

- The servicer must submit a referral package to the bankruptcy attorney. The referral package must include the applicable mortgage loan status data (shown in *Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals*) and the documentation the attorney needs to conduct bankruptcy proceedings (as listed below).
- The bankruptcy attorney will notify the servicer of the receipt of the referral package (and indicate whether or not it is complete) within two business days. The servicer must send any required missing documentation (or, if appropriate, have the foreclosure attorney or trustee send the documents) to the bankruptcy attorney within five business days after it receives the attorney's acknowledgment and request.
- The bankruptcy attorney will request the servicer to provide the information needed to complete the Proof of Claim or other necessary action. The servicer must provide this information to the bankruptcy attorney within three business days.
- The servicer must provide any additional information, verifications, certifications, documentation, and signatures the bankruptcy attorney requests no later than three business days after the bankruptcy attorney asks for them.
- The bankruptcy attorney must attend the Meeting of Creditors or otherwise begin negotiations with the borrower's (debtor's) counsel concerning the proposed plan or a foreclosure prevention alternative.

The bankruptcy attorney will promptly send to the servicer all workout proposals, along with a recommendation either to accept the proposal or to pursue an alternative bankruptcy strategy (describing the details of the alternative strategy). The servicer must review the information and recommendation within five business days. If the servicer concurs with any recommended workout proposal and Fannie Mae's approval is required, it must submit the recommendation to Fannie Mae through HSSN within ten business days after it receives the bankruptcy attorney's initial recommendation. Then, within five business days after it receives Fannie Mae's decision about the workout proposal, the servicer must advise the bankruptcy attorney of the decision.

- The servicer must monitor a mortgage loan with a confirmed Bankruptcy Plan to verify that the required monthly payments are made in a timely manner. If the mortgagor becomes 60 days delinquent in making payments pursuant to the plan, the servicer must send a new referral to the bankruptcy attorney. The servicer must send the referral no later than two weeks from the 60th day of delinquency. The servicer is responsible for ensuring that all previous payments have been properly applied and for verifying that the borrower is 60 days delinquent before sending the referral. (In jurisdictions in which the post-petition mortgage payments are made through the Chapter 12 or Chapter 13 trustee, the servicer must confirm that the debtor is 60 days delinquent in his or her payments to the trustee prior to referring the case to a bankruptcy attorney.) The servicer also must notify the bankruptcy attorney within one business day about any payments that are made after a payment default is declared.
- If the bankruptcy attorney is Fannie Mae-retained, the attorney will handle any foreclosure following relief from the automatic stay, or, in Arizona, California, or Washington, a trustee chosen by the servicer may handle the foreclosure.
- Should foreclosure proceedings have to be recommenced at some point in a jurisdiction where Fannie Mae has not retained attorneys, the servicer must refer the case back to the foreclosure attorney (or trustee) that was initially handling the foreclosure proceedings in order to avoid duplicative or excessive attorney fees. However, if the servicer believes that the attorney (or trustee) did not properly handle

the foreclosure proceedings, the servicer must contact Fannie Mae to request permission to incur the additional expense of using a different attorney (or trustee) to process the foreclosure to completion.

Required Documents

The bankruptcy attorney generally needs the following documents to conduct bankruptcy proceedings. The attorney may request the servicer to provide additional documents from time to time. The servicer must respond promptly (within three business days) to all requests received from the bankruptcy attorney.

- Copy of Note(s) (including any endorsements), Any Addenda, and Any Modifications (Both Sides)
- Copy of Security Instrument, Any Riders, and Any Modifications (with Recording Information)
- Copies of Complete Chain of Assignments (with Recording Information) through Servicer or MERS[®], as applicable (These assignments are not required if MERS was originally named as nominee for the beneficiary.)

When a bankruptcy attorney is retained with respect to a mortgage loan secured by a manufactured home, the servicer must provide the bankruptcy attorney (whether the bankruptcy attorney has been retained by the servicer or by Fannie Mae) with:

- information that the property type is manufactured housing;
- copies (or originals, if originals will be needed) of all collateral documents or other documents that may facilitate the process; and
- if there has been a property inspection, a copy of the property inspection report, property status report, or any information that was gathered in connection with the property inspection that relates to the status of the property as manufactured housing, or if there has not been a property inspection, all the information that Fannie Mae requires to be gathered in connection with such an inspection that relates to the status of the property as manufactured housing insofar as such information is available to the servicer.

**Delinquency
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Prevention**

Bankruptcy Proceedings

Exhibit 1

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Exhibit 2

Exhibit 2: Mortgage Loan Status Data for Bankruptcy Referrals (01/01/11)

The following information must be sent to a bankruptcy attorney when a mortgage loan is referred for bankruptcy proceedings:

Servicer Information

- Servicer's Name and Address, and Fannie Mae Identification Number
- Servicer's Contact Person's Name, Telephone Number, e-mail address, and Fax Number

Property Information

- Property Address, and Tax Identification Number or Assessor's Parcel Number (if available)
- Property Type (single-family, duplex, condo, co-op, etc.) For manufactured homes, the servicer must advise the selected attorney and forward to him or her a copy of the property inspection report, or property status report, and copies of all appropriate lien documents including, if applicable, any documents that evidence surrender of the certificate of title to the home.
- Number of Dwelling Units
- Occupancy Status
- Owner-Occupied or Investment Property (If the mortgage loan is secured by an investment property, it is very important to provide all known information, including number of units, occupancy status, names of any tenants, rental income, lease amounts, etc.)
- Native American Land (Tribal Trust, Allotted, Restricted Fee, as applicable)
- Name and Telephone Number of Management Agent for a Cooperative Project (if applicable)

- Name and Telephone Number of Homeowners' Association for Condominium Project (if applicable)

Borrower Information

- Borrower's Name
- Borrower's Mailing Address (if different from Property Address)
- Borrower's Social Security Number or Tax Identification Number
- Borrower's Current Military Status (if any)

Mortgage Loan Information

- Servicer's Loan Identification and Fannie Mae Loan Number
- MERS Mortgage Identification Number (MIN), if applicable
- Lien Priority (First or Subordinate)
- Original Mortgage Loan Amount
- Current UPB and Last Paid Installment Date
- Total Amount Past Due (Reinstatement)
- Total Amount Past Due (Payoff)
- Itemization of fees, costs, and other charges
- Brief Servicing History for last 12 months (including previous foreclosure referrals, foreclosure prevention efforts and bankruptcies)
- Name of Mortgage Insurer (if applicable)
- Any Other Important Mortgage Loan Characteristics (such as Home Equity Conversion Mortgage status, Texas Home Equity Loan, etc.)

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Exhibit 2

Bankruptcy Information

- Bankruptcy Case Number
- Bankruptcy Jurisdiction
- Date of Bankruptcy Filing
- Chapter Under Which Bankruptcy Filed
- Any Property Valuation Information
- Breakdown of Mortgage Payment (principal, interest, and escrow deposits)
- Mortgage Escrow Analysis (showing any shortage or surplus)
- Foreclosure Case Number, Jurisdiction, and Date Proceedings Initiated (when case is referred by the foreclosure attorney)

This page is reserved.

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Exhibit 3

Exhibit 3: Allowable Bankruptcy Attorney Fees (10/01/08)

Bankruptcy Action	Maximum Fee Reimbursement
Chapter 7 Cases	
Motion for Relief from Stay, One or Two Hearings, and Order	\$550
Proof of Claim Preparation (if required) ¹	\$150
Notice of Appearance	\$0
Additional Hearings or Other Services	Excess fee request
Chapter 13 Cases	
Proof of Claim Preparation, Plan Review, and Plan Negotiations ¹	\$300
Objection to Plan and One or Two Hearings	\$400
Motion for Relief from Stay, One or Two Hearings, and Order	\$650
Agreed Order: Court Certification of Default/Stay Termination	\$150
Agreed Order: Notice of Default/Stay Termination	\$50
Notice of Appearance	\$0
Additional Hearings on Motions for Relief from Stay or Objections to Plans	Excess fee request
Second Motion for Relief from Stay or Objection to Plan	
Response to Proof of Claim Objection	
Actions Related to Serial Bankruptcy Filers	
Other Fees or Costs ²	
Footnotes: ¹ If a mortgage loan is not 60 days or more past due, then the servicer must prepare the Proof of Claim and/or review the plan (in a Chapter 13 case). If a mortgage loan is not 60 days past due and the servicer believes that an attorney should review a plan (in a Chapter 13 case) due to its potential effect on a borrower’s obligations, then the attorney or servicer must submit an excess fee request for plan review. ² Fees for Chapter 11 or Chapter 12 cases, adversary proceedings, or any other fees not covered in the above schedule must be submitted as an excess fee request. (continued)	

**Delinquency
Management and Default
Prevention**

Bankruptcy Proceedings

Exhibit 3

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Additional Notes:

Fannie Mae will not reimburse bankruptcy fees or costs for the following without prior excess fee approval:

- mortgage loans referred when the borrower was less than 60 days past due per the terms of the mortgage loan (or less than 60 days past due under the bankruptcy plan);
- PACER and mailing (preparation and postage);
- mortgage loan document retrieval; or
- Motions for Relief from Stay in Chapter 7 cases when filed more than 60 days from the bankruptcy petition date.

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Exhibit 4

Exhibit 4: Electronic Public Access Providers (01/01/11)

The following electronic public access systems enable members to access federal, state, and local court records, thus giving them the ability to immediately check on the latest status of a given bankruptcy case. (The information shown below is based on the latest information Fannie Mae has available. It should be confirmed with the individual service provider.)

Service:	Lexis Nexis® Courtlink®	Pacer
Service Provider:	Lexis Nexis	United States Courts
Address:	Lexis Nexis CourtLink 13427 NE 16 th Street Suite 100 Bellevue, WA 98805	PACER Service Centers P.O. Box 780549 San Antonio, TX 78278-0549
Telephone:	(425) 467-3000 (877) 613-3010	(210) 301-6440 (800) 676-6856
Fax:	(425) 974-1419	(210) 301-6441
Availability:	24 hours a day, 7 days a week (but some courts have scheduled downtime)	24 hours a day, 7 days a week
Subscription Fee:	Several plans are available; contact the service provider for details	None
Service Costs:	Billed monthly; contact the service provider for details	Billed quarterly; contact the service provider for details

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Exhibit 5

Exhibit 5: Bankruptcy Referral and Completion Timelines (10/17/05)

Chapter 7 Bankruptcy Matrix

Delinquency Status	When to Refer to an Attorney	Timeline for Case Completion
Mortgage loan is current or less than 60 days delinquent when the bankruptcy is filed	Must wait until the mortgage loan is 60 days delinquent. Then refer no later than 2 weeks from the 60 th day of delinquency	2 months and 2 weeks from the 60 th day of delinquency to case completion
Mortgage loan is 60 or more days delinquent or in foreclosure when the bankruptcy is filed	Refer no later than 2 weeks after the bankruptcy is filed	2 months and 2 weeks from the date of the bankruptcy filing to case completion
Case completion for a Chapter 7 bankruptcy proceeding is defined as: automatic stay terminated, case dismissed or closed, or the borrower receives a discharge and the trustee abandons all interest in the secured property.		

Chapter 11 Bankruptcy Matrix

Delinquency Status	When to Refer to an Attorney	Timeline for Case Completion
Mortgage loan is current or delinquent when bankruptcy is filed	Refer no later than 2 weeks from the date of the bankruptcy filing	No timeline implemented at this time

Chapter 12 and 13 Bankruptcy Matrix

Delinquency Status	When to Refer to an Attorney	Timeline for Case Completion
Mortgage loan is current or less than 60 days delinquent when the bankruptcy is filed	Must wait until the mortgage loan is 60 days delinquent or may refer earlier if servicer believes it is necessary, but no later than 2 weeks from the 60 th day of delinquency	5 months and 2 weeks from the 60 th day of delinquency or from the date of referral to a bankruptcy attorney (whichever occurs first) to case completion
Mortgage loan is 60 or more days delinquent or in foreclosure when the bankruptcy is filed	Refer no later than 2 weeks after the bankruptcy is filed	5 months and 2 weeks from the date of the bankruptcy filing to case completion
After confirmation of either a Chapter 12 or Chapter 13 plan, the mortgagor becomes 60 days delinquent making payments pursuant to the plan	Refer when the mortgage loan is 60 days delinquent, but no later than 2 weeks from the 60 th day of delinquency	2 months and 2 weeks from the 60 th day of delinquency
Case completion for a Chapter 12 or 13 bankruptcy proceeding is defined as: automatic stay terminated, case dismissed or closed, or the trustee abandons all interest in the secured property, or the Chapter 12 or 13 plan is confirmed.		

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Chapter 6. Foreclosure Prevention Alternatives (10/31/08)

Fannie Mae does not want to foreclose a delinquent mortgage loan if there is a reasonable chance of avoiding foreclosure. If the reason for default appears to be long-term or too serious for the short-term relief measures that are discussed in *Chapter 3, Delinquency Prevention*, to be effective, the servicer must consider Fannie Mae's permanent foreclosure prevention alternatives.

All conventional mortgage loans are eligible for foreclosure prevention alternatives—those held in Fannie Mae's portfolio, those purchased for Fannie Mae's portfolio but subsequently sold to back an MBS issue, and those originally delivered as part of an MBS pool. While Fannie Mae does not require that its foreclosure prevention alternatives be used for regular servicing option MBS mortgage loans, shared-risk special servicing option MBS mortgage loans while the servicer's shared-risk liability remains in effect, and other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement, Fannie Mae encourages a servicer 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 will not be responsible for any losses or expenses the servicer incurs and will not pay the incentive fees it usually pays for certain foreclosure prevention alternatives.

For servicers who service first-lien mortgage loans owned or securitized by Fannie Mae and also service subordinate-lien mortgage loans for themselves or other investors, and the servicer determines that a borrower of a first-lien mortgage loan owned or securitized by Fannie Mae is eligible for one of the foreclosure prevention alternatives, an offer to the borrower to accept the foreclosure prevention alternatives should not be contingent upon the borrower making payments or bringing current any subordinate liens which may also exist on the property. Fannie Mae recognizes that in some cases it may be necessary to make a small payment to a subordinate lien holder when the servicer determines that it is otherwise beneficial to pursue either a preforeclosure sale, a deed-in-lieu of foreclosure, or a loan modification (which may require a resubordination of the subordinate lien) as the foreclosure prevention alternative. In those instances, the servicer must obtain Fannie Mae's prior written approval to make the payment.

Generally, Fannie Mae's standard guidelines governing foreclosure prevention options also apply to EA/TPR™ (Expanded Approval/Timely Payment Awards) mortgage loans. All workout cases for EA/TPR mortgage loans must be submitted to Fannie Mae for prior approval. There is no delegation of authority for approving workouts for EA/TPR mortgage loans.

The servicer of a Community Living® mortgage loan must be sensitive to the importance of working with the borrower and the funding agency to resolve a serious delinquency. In particular, Fannie Mae requires the servicer to devote additional resources to foreclosure prevention efforts when the group home that secures a delinquent Community Living mortgage loan is still being occupied by disabled tenants and, if appropriate, delay the initiation of foreclosure. In such cases, the servicer may ask Fannie Mae to work with the borrower and the funding agency if that agency wants to pursue workout arrangements (such as a repayment plan, mortgage modification, loan assumption, or special refinancing) to avoid the additional costs of finding replacement housing for the tenants.

For government mortgage loans, a servicer must offer the specific foreclosure prevention alternatives that the mortgage insurer or guarantor makes available. Fannie Mae does not design workout alternatives specifically for government mortgage loans, but, on a case-by-case basis, is willing to consider approving the use of one of its standard alternatives for a government mortgage loan—as long as the proposed workout is acceptable to the insurer or guarantor and would not result in a loss to Fannie Mae. When Fannie Mae has implemented special procedures related to specific workout alternatives offered by one of the government agencies, they are discussed in this *Chapter*. For example, FHA mortgage loans are not eligible for the HomeSaver Advance (HSA) foreclosure prevention option. Servicers of FHA mortgage loans must utilize FHA's Partial Claim foreclosure prevention option in lieu of the HSA, if applicable. However, VA mortgage loans and Rural Development (RD) mortgage loans are eligible for an HSA.

If a servicer learns about the issuance of a lead-based paint citation, obtains other evidence of lead-based paint law violations, or becomes aware of threatened or pending lead-based paint litigation for any mortgage loan secured by a one-unit investment property or a two- to four-unit property for which it is considering a foreclosure prevention alternative, the servicer must send Fannie Mae a copy of any documentation it has related to lead-based paint law violations or threatened or pending lead-based paint litigation. The servicer must notify Fannie Mae about the current value of the property, the amount of Fannie Mae's outstanding debt, and the number of children under eight years of age who are residing in the property (giving the exact age of each child). If the security property is located in Massachusetts, the servicer must conduct an actual search to determine whether there are any outstanding lead-based paint citations against the property or the property owner before it recommends a foreclosure prevention alternative to Fannie Mae.

Fannie Mae's workout hierarchy outlined in the introduction to this *Part* recommends the preferred order of consideration for the use of special relief measures and foreclosure prevention options to resolve a delinquency.

**Section 601
Determining a
Borrower's Eligibility
for Foreclosure
Prevention Alternatives
(06/01/09)**

Fannie Mae believes that it is very important for the servicer to establish an open line of communication with a borrower early in the delinquency resolution process since a borrower generally will be more forthcoming after he or she has had several contacts with the servicer's personnel. This is one of the reasons Fannie Mae requires the servicer to include in the first foreclosure prevention solicitation letter it sends to a borrower between the 35th and 45th day of delinquency (as discussed in *Section 203, Letters (01/01/11)*) information about the different options that are available to help the borrower cure the delinquency, including HAMP.

The servicer also must make sure that the borrower understands that offers of foreclosure prevention alternatives are just that—offers—and that he or she is under no obligation to agree to one of the offers. A servicer must handle workouts that involve the borrower's relinquishing ownership of the property (assumptions, preforeclosure sales, deeds-in-lieu of foreclosure) carefully to ensure that the borrower's rights are appropriately protected. It also is important that both the servicer and the borrower understand that Fannie Mae's foreclosure prevention workout alternatives are designed to assist a borrower who is experiencing a financial

hardship—particularly (but not exclusively) one whose property is in an economically distressed area. Fannie Mae expects a borrower who has the ability to meet his or her financial obligations to continue to do so. In addition, Fannie Mae requires a borrower who agrees to a foreclosure prevention workout alternative to contribute some funds to reduce Fannie Mae's loss on the mortgage loan if he or she has the financial ability to do so.

**Section 601.01
Requesting Preliminary
Financial Information
(09/30/06)**

A servicer often will include in its foreclosure prevention solicitation letter a request for the borrower to submit preliminary financial information. Collecting a minimal amount of financial information when foreclosure prevention alternatives are first discussed with a borrower will help the servicer get a general understanding about which alternative appears to be the most appropriate for the borrower. The servicer has the option of collecting the financial information through a customized financial form on the servicer's letterhead or through the *Borrower's Financial Statement* ([Form 1020](#) or [1020\(S\)](#)). The [Form 1020/1020\(S\)](#) is a one-page financial information form that is designed to collect the minimal amount of financial information needed to evaluate whether to offer a foreclosure prevention alternative to a borrower. If a servicer's customized financial form is used, the form must include all information required on [Form 1020/1020\(S\)](#).

Each borrower who signs the servicer's customized financial form or [Form 1020/1020\(S\)](#) will need to provide some personal identifying information (name, address, telephone number(s), and Social Security number; the number of persons living on the property; and the number of dependents living on the property). In addition, the borrowers must jointly respond to questions about the property (whether it is listed for sale and, if so, the agent's name and telephone number), the number of cars owned, whether a credit counseling service has been contacted, the combined monthly income (from both wages and other identified sources), the estimated value of certain types of assets, the monthly payment and balance due for certain types of liabilities, and the reason for the delinquency. As supporting documentation, each borrower must attach to the servicer's customized financial form or [Form 1020/1020\(S\)](#) his or her most recent paystub (or, for a self-employed borrower, the most recent federal income tax return).

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The servicer must use the information from the servicer's customized financial form or [Form 1020/1020\(S\)](#), along with a credit report for each borrower, to determine the total assets, liabilities, monthly income, and monthly expenses. In some cases, it may be necessary to gather additional information to support the preliminary financial information or there may be instances in which the documentation Fannie Mae generally requires will not apply. A servicer must contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to discuss any special documentation that may be needed to adequately support the financial information provided by the borrower(s). After the total financial picture has been developed for the borrowers, the servicer should be able to reach a preliminary conclusion about which foreclosure prevention workout alternative(s) will be effective. At this point, the servicer must send Fannie Mae information about the mortgage loan through HSSN (as discussed in *Section 601.02, Using HomeSaver Solutions Network (01/31/03)*).

Section 601.02
Using HomeSaver
Solutions Network
(01/31/03)

HSSN enables a servicer to access Fannie Mae's Web site and electronically submit its foreclosure prevention cases for conventional mortgage loans to Fannie Mae for consideration. The servicer can provide the facts for any given delinquency and the borrower's financial data, and the application will recommend which workout options are most appropriate to the particular circumstances. After logging in, all the servicer needs to do is to enter and save the data for each foreclosure prevention case or request for reclassification that it wants to report, and the information will be automatically available to Fannie Mae. (The servicer can save any information that it has gathered to the network as a draft if its recommendation is not yet ready for Fannie Mae's consideration.) Once an approved foreclosure prevention alternative has been finalized (or closed), the servicer can report that information to Fannie Mae through HSSN. A servicer also may use HSSN to produce loan-level status reports for all of the mortgage loans that it has submitted to Fannie Mae through HSSN.

To use HSSN, a servicer must first complete and submit certain registration forms to Fannie Mae. The forms are available from [eFannieMae.com](#). To obtain forms from [eFannieMae.com](#), a servicer must select the "Single Family," then the "Default Management" function, and then under "Technology Tools and Applications," select "*HomeSaver Solutions Network*," then "HSSN Registration." The servicer should return

the required completed forms to Fannie Mae by faxing them to (703) 833-5680 or by mailing them to Fannie Mae; Technology Registration; Mail Stop 9H-202; 11600 American Dream Way; Reston, VA 20176; email scanned forms to product_rollout_fax@fanniemae.com. Fannie Mae will send the servicer notification of the applicable userid and password approximately one week after receiving the completed forms. As soon as the servicer receives Fannie Mae's notification, it may access HSSN (using the same path it used to obtain the registration materials, but choosing the "Log in to HSSN via Asset Management Network" option instead of the "HSSN Registration" option).

**Section 602
Mortgage Modifications
(01/01/09)**

There may be times when the only way to provide relief to a deserving borrower is to change some of the terms of a mortgage loan. A servicer must consider modification of a mortgage loan that is delinquent or for which default is reasonably foreseeable (imminent) under circumstances similar to the following:

- a borrower who was granted military indulgence cannot cure his or her delinquency within three months after being discharged from the military service;
- a borrower who has experienced a permanent or long-term reduction in income is unable to continue making the mortgage payments;
- the terms of the mortgage loan (such as those imposed by a nonstandard adjustable-rate mortgage loan) contribute toward a greater risk of borrower default; or
- any other situation in which changing the terms of the mortgage loan would cure the present delinquency, avoid acquisition of the property, or prevent future delinquencies.

The servicer of a ***whole mortgage loan or a participation pool mortgage loan that Fannie Mae holds in its portfolio*** may recommend modifications that extend the term of the mortgage loan, provide for reamortization of the outstanding debt, change adjustable-rate mortgage loans to fixed-rate mortgage loans (using the current market interest rate for the term of the mortgage loan), allow an adjustable-rate mortgage loan to retain the adjustable rate features as provided in the original mortgage loan documents, capitalize delinquent interest (and costs, if allowed by

state law), reduce the existing interest rate to the current market rate, use below-market interest rates, temporarily reduce the interest rates of fixed-rate mortgage loans in which the reduced interest rate increases in a series of steps to a fixed, current market interest rate, or increase the interest rate of adjustable-rate mortgage loans in a series of steps to a fixed, current market interest rate. Fannie Mae's approval is required for any of the foregoing.

A change in the terms of a mortgage loan may not become effective while it remains in its MBS pool. This applies to all mortgage loans in MBS pools, including all Pooled from Portfolio mortgage loans purchased as whole loans for Fannie Mae's portfolio that Fannie Mae subsequently securitizes. However, if the mortgage loan has been in a continuous state of delinquency for four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure of the delinquency during that period, then the mortgage loan may be modified after it is purchased from the MBS pool (in the case of a regular servicing option mortgage loan) or through Fannie Mae's standard reclassification procedures for delinquent special servicing option mortgage loans. However, performing MBS mortgage loans are ineligible for purchase from the related MBS pool for the purpose of modifying the mortgage loan.

There is a limited exception whereby an MBS mortgage loan with a pool issue date on or after January 1, 2009, can be removed from an MBS pool after the mortgage loan has been delinquent for at least one monthly payment, if the delinquency has not been fully cured on or before the next payment date (for example, 30-days delinquent). While there is an expectation that the standard removal requirements after a continuous state of delinquency for four consecutive monthly payment due dates without a full cure of the delinquency during that period will apply in most cases, Fannie Mae recognizes that there may be extraordinary circumstances relating to a particular mortgage loan that may justify removing the mortgage loan from an MBS pool to offer a foreclosure prevention alternative before the mortgage loan is in a continuous state of delinquency for at least four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure of the delinquency during that period.

Therefore, on an exception basis, servicers may seek Fannie Mae's prior written consent to remove an MBS mortgage loan with a pool issue date on or after January 1, 2009 after the mortgage loan has been as little as one monthly payment delinquent, if the delinquency has not been fully cured on or before the next payment date (for example, 30 days delinquent), if the servicer has determined that a loan modification is the appropriate foreclosure prevention option and that the extraordinary circumstances relating to the mortgage loan justify the earlier removal of the mortgage loan from the MBS pool to facilitate the loan modification.

Except as otherwise specified, MBS mortgage loans that are current (or have less than four full monthly payments past due, measured by the last paid installment) are ineligible for purchase or reclassification for the purpose of modifying the mortgage loan. Purchase or reclassification to modify an MBS mortgage loan is only permitted to facilitate a loan modification of an MBS mortgage loan that meets the applicable foreclosure prevention criteria and is subject to the timing rules stated above.

Regular servicing option MBS mortgage loans, and shared-risk special servicing option MBS mortgage loans for which the servicer's shared risk liability has not expired, that have been removed from an MBS pool, and have been modified are not eligible for redelivery to Fannie Mae unless Fannie Mae agrees otherwise.

The servicer must prepare the *Agreement for Modification or Extension of Mortgage* ([Form 181](#)), *Loan Modification Agreement (Fixed Interest Rate)* ([Form 3179](#)), *Loan Modification Agreement (Adjustable Interest Rate)* ([Form 3161](#)), or *Loan Modification Agreement (Step Interest Rate)* ([Form 3162](#)).

Section 602.01
Modifying Government
Mortgage Loans
(05/01/10)

A change to the terms of a government mortgage loan may not become effective while it remains in its MBS pool. However, if the mortgage loan has been in a continuous state of delinquency for four consecutive monthly payment due dates (or at least eight consecutive payment due dates in the case of a biweekly mortgage loan) without a full cure of the delinquency during that period, then the mortgage loan may be modified after it is purchased from its related MBS pool (as a repurchase in the case of a regular servicing option mortgage or through Fannie Mae's standard reclassification procedures for delinquent special servicing option

mortgage loans). MBS mortgage loans that are current (or have been in a continuous state of delinquency for less than four consecutive monthly payment due dates without a full cure of the delinquency during that period) are ineligible for purchase from the MBS pool for the purposes of modifying the mortgage loan. Regular servicing option MBS mortgage loans, and shared-risk special servicing option MBS mortgage loans for which the servicer's shared risk liability has not expired, that have been removed from an MBS pool and have been modified are not eligible for redelivery to Fannie Mae unless Fannie Mae agrees otherwise. The following procedures apply to all government mortgage loans in Fannie Mae's portfolio, including those that were purchased from an MBS pool. Fannie Mae's prior approval—and that of the mortgage insurer or guarantor—is required for all proposals to change the terms of a government mortgage loan. Before recommending a modification or extension to Fannie Mae, the servicer must first obtain the approval of FHA, HUD, VA, or the RD, using any documentation the mortgage insurer or guarantor requires. After all applicable approvals are obtained, the servicer must prepare the *Agreement for Modification or Extension of Mortgage* ([Form 181](#)), have the form signed by the borrower(s) and any co-makers or endorers of the note, and have its authorized representative sign the completed form to indicate the servicer's approval of the modification or extension. The servicer must submit the information pertaining to the modification through HSSN, and the executed [Form 181](#) must be uploaded into the case in HSSN.

If Fannie Mae identifies any discrepancies between the information entered into HSSN and Fannie Mae's investor reporting system, Fannie Mae will work with the servicer to identify the proper corrective action required to resolve the issue(s). If the servicer determines that the data entered into HSSN was incorrect, the servicer must cancel the case in HSSN, correct the data, and resubmit the corrected case via HSSN. If the Loan Activity Record (LAR) data was incorrect, the servicer must submit a corrected LAR. After the servicer has completed the appropriate corrective action, the servicer must notify Fannie Mae. Fannie Mae will then resolve the error in its investor reporting system. The servicer can confirm that the investor reporting system accurately applied the modified terms after the error is resolved.

- If the servicer or MERS is the mortgagee of record—or if Fannie Mae is the mortgagee of record and Fannie Mae has given the servicer a limited power of attorney that allows it to execute this type of modification on Fannie Mae’s behalf—the servicer may execute the Agreement and, if applicable, submit it for recordation. The servicer must send a copy of the executed Agreement to the borrower and to the mortgage insurer or guarantor, submit the original executed (and recorded, if applicable) [Form 181](#) to the appropriate custodian, and place a copy in the servicer’s individual mortgage loan file.
- If Fannie Mae is the mortgagee of record, but Fannie Mae has **not** given the servicer a limited power of attorney that allows it to execute this type of modification on Fannie Mae’s behalf, the servicer must send the original Agreement to Fannie Mae for execution (using the following address: Fannie Mae; Attn: Vendor Oversight; 13150 Worldgate Drive; Herndon, VA 20170). The servicer must send the Agreement under cover of a transmittal letter that specifies the type of action being requested, indicates whether the Agreement will need to be recorded in the public records after it is executed, and provides an address to which the executed Agreement should be returned.

Fannie Mae will execute the Agreement and return it to the servicer (regardless of whether the executed Agreement needs to be recorded). If the Agreement needs to be recorded, the servicer must submit it for recordation. The servicer must send a copy of the executed Agreement to the borrower and to the mortgage insurer or guarantor, submit the original executed (and recorded, if applicable) [Form 181](#) to the document custodian, and place a copy in the servicer’s individual mortgage file.

Section 602.02
Modifying Conventional
Mortgage Loans
(04/21/09)

Fannie Mae’s prior approval—and that of the mortgage insurer, if applicable—is required for all proposals to change the terms of a conventional first- or second-lien mortgage loan. Fannie Mae does not permit mortgage modifications while a mortgage loan is in an MBS pool (including Pooled from Portfolio mortgage loans). When Fannie Mae’s mortgage loan is in the second-lien position and both the first- and second-lien mortgage loans need to be modified, it may be more appropriate to consider consolidating and refinancing the total debt; the servicer must submit to Fannie Mae for prior approval any proposals to consolidate and refinance the existing debt in lieu of modifying the outstanding mortgage loans.

Before Fannie Mae agrees to modify a delinquent conventional mortgage loan, Fannie Mae requires the borrower to make a cash contribution if financially feasible toward reducing the delinquency.

The servicer must ensure that its communications with the borrower clearly convey that the loan modification will not be binding, enforceable, or effective unless and until the borrower delivers the executed loan modification agreement and any required payments to the servicer and the servicer signs the loan modification agreement. This applies to all mortgage loans in MBS pools, including all Pooled from Portfolio mortgage loans purchased as whole loans for Fannie Mae's portfolio that it subsequently securitizes. A modification of any mortgage loan in an MBS pool can only become effective after it has been removed from the MBS pool.

The servicer may charge the borrower the actual out-of-pocket expenses for a credit report, any required title bringdown, or other documented expenses. The servicer must ensure that any costs charged to the borrower are permitted under the terms of the note, security instrument, and applicable law. If the borrower is unable to pay all or a portion of the servicer's processing fee, Fannie Mae will consider reimbursing the servicer for the difference between what the borrower can pay and the amount of the servicer's fee or, for a portfolio mortgage loan, capitalizing all or part of the fee as part of the modified mortgage loan amount. (The servicer must advise Fannie Mae of the collection of its fee in the next monthly activity report it transmits through Fannie Mae's investor reporting system.)

The servicer does not need to obtain the mortgage insurer's approval before it recommends a modification to Fannie Mae, nor does it need to submit the borrower's actual application to Fannie Mae. Instead, the servicer should transmit general summary information from the application, a description of the borrower's financial circumstances, a property market value analysis, if obtained, and its proposed recommendation to Fannie Mae through HSSN (as discussed in *Section 601.02, Using HomeSaver Solutions Network (01/31/03)*).

Mortgage modifications must be signed by an authorized representative of the servicer and must reflect the actual date of signature by the servicer's representative. Signature by the servicer's authorized representative must

not occur until after the mortgage loan has been removed from the MBS pool and either reclassified as a Fannie Mae portfolio mortgage loan or purchased by the servicer.

Although a modification may not become effective until after the mortgage loan has been removed from the MBS pool, the servicer can begin the process leading up to a loan modification prior to the removal of the mortgage loan from the MBS pool. For example, during the period prior to the removal of a mortgage loan from an MBS pool, a servicer may analyze the borrower's suitability for a loan modification and may negotiate with the borrower regarding the terms of a loan modification.

The servicer may agree to the terms of a modification and accept payments from the borrower in anticipation of a modification becoming effective after the removal of the mortgage loan from an MBS pool. In accordance with *Part III, Section 102.06*, and, if permitted by the applicable mortgage loan documents, servicers may accept and hold as "unapplied funds" (held in a T&I custodial account) amounts deposited pending a proposed modification that is in negotiation and anticipated to be approved after removal of the mortgage loan from an MBS pool. Once the request for a loan modification is approved, the appropriate entry is made on Fannie Mae systems and the servicer has signed and dated the modification, the servicer immediately must apply any amounts held as unapplied funds as one or more scheduled payments and remit the funds to Fannie Mae. If the request is not approved, the servicer immediately must apply the unapplied funds to any scheduled contractual payments that are due and contact the borrower to determine what should be done with any remaining funds. Servicers must have appropriate policies, procedures, and controls to ensure compliance with Fannie Mae's requirements regarding loan modifications.

In reaching a decision about the borrower's application, Fannie Mae will work with the servicer to develop modified mortgage loan terms that address the borrower's financial ability to repay the mortgage debt. As early as possible, the servicer must make sure that the borrower is aware of what to expect (and when), including his or her responsibility for remitting any required cash contribution before the modification can be finalized. Once Fannie Mae approves the modification, a letter including terms and conditions of Fannie Mae's decision will be available to the

servicer through HSSN. After receiving this notification, the servicer must request the mortgage insurer's approval (if required).

The servicer must then prepare a *Loan Modification Agreement (Fixed Interest Rate)* ([Form 3179](#)), *Loan Modification Agreement (Adjustable Interest Rate)* ([Form 3161](#)), or *Loan Modification Agreement (Step Interest Rate)* ([Form 3162](#)) to document the agreed-upon terms of the modification. If the servicer (or MERS) is the mortgagee of record (or if Fannie Mae is the mortgagee of record and has given the servicer a limited power of attorney that allows it to execute loan modification agreements on Fannie Mae's behalf), the servicer must execute the Loan Modification Agreement, have the executed Agreement recorded (if required by local law or Fannie Mae), and send the Agreement to the document custodian.

If Fannie Mae's designated document custodian is the custodian, the documents must be annotated with the Fannie Mae loan number and, if applicable, the MERS Mortgage Identification Number, and mailed to The Bank of New York Mellon Trust Company, NA; Attn: Additional Custody Documents; 5730 Katella Ave.; Cypress, CA 90630. If Fannie Mae is the mortgagee of record, but Fannie Mae has not given the servicer a limited power of attorney that allows it to execute loan modification agreements on Fannie Mae's behalf, the servicer must send the Loan Modification Agreement to Fannie Mae for execution. Documents submitted to Fannie Mae for execution must be identified by the Fannie Mae loan number and sent under cover of a letter that provides any special instructions related to execution of the documents and indicates the name and address to which the executed documents should be returned. The documents must be mailed to Fannie Mae; Attn: Vendor Oversight; 13150 Worldgate Drive; Herndon, VA 20170.

For all mortgage loans that are modified, the servicer must ensure that the modified mortgage loan retains its first-lien position and is fully enforceable. The Loan Modification Agreement must be executed by the borrower(s) and, in the following circumstances, must be in recordable form:

- if state or local law requires a modification agreement be recorded to be enforceable;

- if the property is located in the State of New York or Cuyahoga County, Ohio;
- if the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's mortgage modification alternatives);
- if the final interest rate on the modified mortgage loan is greater than the pre-modified interest rate in effect on the mortgage loan;
- if the remaining term on the mortgage loan is less than or equal to ten years and the servicer is extending the term of the mortgage loan more than ten years beyond the original maturity date; or
- if the servicer's practice for modifying mortgage loans in the servicer's portfolio is to create modification agreements in recordable form.

In addition, to retain the first-lien position, servicers must:

- ensure all real estate taxes and assessments that could become a first lien are current, especially those for manufactured homes taxed as personal property, personal property taxes, condominium/HOA fees, utility assessments (such as water bills), ground rent and other assessments;
- obtain a title endorsement or similar title insurance product issued by a title insurance company if the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's mortgage modification alternatives); or if the final interest rate on the modified mortgage loan is greater than the interest rate in effect prior to modification of the mortgage loan; and
- record the executed Agreement if (1) state or local law requires the modification agreement be recorded to be enforceable; (2) the property is located in Cuyahoga County, Ohio; (3) the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's modification alternatives); (4) the final interest rate on the modified mortgage loan is greater than the interest rate in effect prior to

modification of the mortgage loan; or (5) the remaining term on the mortgage loan is less than or equal to ten years and the servicer is extending the term of the mortgage loan more than ten years beyond the original maturity date.

If the mortgage loan is for a manufactured home, and the lien was created, evidenced, or perfected by collateral documents that are not recorded in the land records (see *Part I, Section 404.01* regarding collateral documents), the servicer also must take such action as may be necessary (including any amendment, recording, and/or filing that may be required) to ensure that the collateral documents reflect the modification, if necessary, in order to preserve Fannie Mae's lien status for the entire amount owed. After a modification is approved, the servicer must adjust the mortgage account as follows:

- Add any amounts to be capitalized for a portfolio mortgage loan to the UPB of the mortgage loan as of the date specified in the agreement. Usually, the capitalization date is one month before the new modified payment will be due. (The servicer may request reimbursement from Fannie Mae when any of its costs are capitalized.)
- Revise the borrower's payment records to provide for collection of the modified installment.
- Change the servicing fee if the mortgage loan was modified to reflect a different amortization type. For a portfolio mortgage loan, the new servicing fee must be the lower of the fee the servicer was receiving before the modification and 0.375 percent (if the modified mortgage loan has a fixed interest rate) or 0.5 percent (if the modified mortgage loan has an adjustable interest rate). For an MBS mortgage loan that is removed from the pool in order to modify its terms, the new servicing fee must be either 0.25 percent (if the modified mortgage loan has a fixed interest rate or has an adjustable interest rate under an ARM Plan 750, 751, 975, 1029, 1423, 1437, 2726, 2728, 2729, 3225, 3227, or 3228) or 0.375 percent (if the modified mortgage loan has an adjustable interest rate under any other ARM plan). In either instance, if the mortgage loan has lender-purchased mortgage insurance coverage that is paid for through annual renewals, the new servicing fee also must include a factor for the amount of the mortgage insurance renewal premium.

- Apply any funds that the borrower deposited with the servicer as a condition of the modification or that the mortgage insurer contributed in connection with the modification. Amounts due for repayment of principal, interest, or advances must be remitted to Fannie Mae promptly. The remaining funds may be used to clear any advances made by the servicer or to credit the borrower's escrow deposit account.

**Section 602.03
Reporting to Fannie Mae
(03/18/10)**

The servicer must report the modification of any mortgage loan in the first delinquency status information it transmits to Fannie Mae after Fannie Mae approves the modification.

Existing monthly Loan Activity Record (LAR) reporting requirements for Fannie Mae servicers will not change for a mortgage loan that has been modified. Servicers must continue to report the standard LAR format for loan payment by the 3rd business day and for payoff activity by the 2nd business day of each month for the prior month's activity (for example, payoff reporting to be received by April 2nd will contain March activity). Servicers must report post-modification UPB once the modification is closed in HSSN (for example, if a modification is closed on March 25, the post-modification UPB must be reported on the April 3rd LAR). If the servicer submits a LAR to report the post-modification UPB before the case is closed in HSSN, an exception will occur.

If the pre-modification UPB or the pre-modification last paid installment (LPI) reported in HSSN for the closed modification does not agree with the pre-modification UPB or LPI in Fannie Mae's investor reporting system, the loan modification will not be processed in Fannie Mae's investor reporting system until the discrepancy is resolved.

Special procedures are required for MBS mortgage loans that were in special servicing option pools. The servicer will need to repurchase the mortgage loan from the MBS pool, but it should not change the terms of the mortgage loan in Fannie Mae's records until after Fannie Mae reclassifies it as an actual/actual remittance type mortgage loan. However, if Fannie Mae does not include the mortgage loan in its list of mortgage loans due for reclassification before the month in which the modified terms become effective, the servicer should contact its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 to request

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that the mortgage loan be added to the reclassifications scheduled for the current month.

Fannie Mae will pay an incentive fee of \$800 for each successful modification completed. Incentive fee payments on eligible mortgage loans will be sent to servicers upon receipt of a closed case entered into HSSN. Fannie Mae will review eligibility for the modification incentive fee and make the final determination based on information provided by the servicer; therefore, servicers need not submit *Cash Disbursement Requests (Form 571)* for payment of modification incentive fees or expenses. Modification incentive fees on eligible mortgage loans will be sent to servicers on a monthly basis.

**Section 603
Mortgage Assumptions
(01/31/03)**

In some instances, it may be in Fannie Mae's best interests to allow a delinquent mortgage loan that has an enforceable due-on-sale (or transfer) provision to be assumed, thus avoiding Fannie Mae's acquisition of the property through foreclosure proceedings. For example, when the current market value of a property equals or exceeds the UPB of the mortgage loan (plus interest due and expected sales costs), an assumption may be a viable alternative for borrowers who must sell their homes because they are experiencing financial hardship. An assumption also may be considered when the current market value of the property is slightly less than the outstanding indebtedness since the property purchaser may be willing to make up the difference in cash because of the lower closing costs associated with a mortgage assumption. In all cases, the property purchaser must qualify for the mortgage loan under Fannie Mae's current underwriting guidelines.

If someone is interested in purchasing a property that secures a delinquent mortgage loan, the servicer must obtain a letter from the borrower which requests that the assumption be allowed and provides his or her financial information that demonstrates his or her inability to continue making payments on the mortgage loan. The servicer must order an appraisal for the property. (also see *Part III, Section 408.06*) The servicer must also obtain the written consent of the mortgage insurer if the loan is covered by mortgage insurance.

To determine whether Fannie Mae is willing to forego the enforcement of the due-on-sale provision, the servicer must transmit to Fannie Mae through HSSN a description of the borrower's financial circumstances, the

property market value analysis from the appraisal, information about any conditions of the mortgage insurer's approval (if applicable), and the servicer's recommendation to waive the due-on-sale clause and permit the assumption based on the creditworthiness of the prospective purchaser. Fannie Mae will work with the servicer and the mortgage insurer to determine the exact terms of the assumption, including any contributions that must be made by the borrower or the property purchaser. Fannie Mae will not approve an assumption if the mortgage loan has subordinate financing—unless arrangements are made to pay off the subordinate liens.

As a condition of approving the assumption, the servicer may charge the property purchaser an assumption fee equal to 1 percent of the UPB of the mortgage loan (as long as that amount falls within a range from \$400 to \$900). The servicer must ensure that any assumption fee charged to the borrower is permitted under the terms of the note, security instrument, and applicable law. If the servicer knows that the property purchaser has the financial means to pay the servicer's out-of-pocket expenses related to the assumption, it may pass these costs on to the purchaser.

Each approved assumption must be documented by an assumption agreement (or by an assumption and release agreement, if a release of liability was agreed to). This agreement must be recorded if state law requires recordation of such agreements.

- If the servicer (or MERS) is the mortgagee of record—or if Fannie Mae is the mortgagee of record and has given the servicer a limited power of attorney that allows it to execute assumption (or assumption and release) agreements on Fannie Mae's behalf—the servicer must execute the assumption (or assumption and release) agreement, have the executed agreement recorded (if required), and send the recorded agreement to the document custodian. (If Fannie Mae's designated document custodian is the custodian, the documents must be annotated with the Fannie Mae loan number, and if applicable, the MERS Mortgage Identification Number, and mailed to The Bank of New York Trust Company, NA; Attn: Additional Custody Documents; 5730 Katella Ave.; Cypress, CA 90630).
- If Fannie Mae is the mortgagee of record, but Fannie Mae has not given the servicer a limited power of attorney that allows it to execute assumption (or assumption and release) agreements on Fannie Mae's

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behalf, the servicer must send the assumption agreement to Fannie Mae for execution. The agreement, which must include the Fannie Mae loan number, must be sent under cover of a letter that provides any special instructions related to execution of the documents and indicates the name and address to which the executed documents should be returned. The documents must be mailed to Fannie Mae; Vendor Oversight; Attn: Document Execution; 13150 Worldgate Drive; Herndon, VA 20170.

The servicer also must ask the title insurer for a title bringdown that changes the effective date of the title policy to the date the assumption (or assumption and release) agreement was recorded and must insure the mortgage loan as modified by the agreement.

The servicer must report the assumption of the mortgage loan in the first delinquency status information it transmits to Fannie Mae after Fannie Mae approves the assumption. The servicer does not need to make any changes to its monthly investor reporting system reports to reflect mortgage assumptions for portfolio mortgage loans. However, when Fannie Mae allows the assumption of a delinquent MBS mortgage loan, the servicer must repurchase the mortgage loan from the MBS pool before the assumption is finalized.

**Section 604
Preforeclosure Sales
(01/31/03)**

Occasionally, none of the servicer's efforts to prevent or cure the delinquency will be successful and the use of relief provisions may not have been feasible or productive. When all measures short of foreclosure have been exhausted for a conventional mortgage loan, the servicer must consider the use of a preforeclosure sale procedure. Under this procedure, when the borrower cannot sell his or her property for the full amount of Fannie Mae's indebtedness, Fannie Mae will consider accepting a payoff of less than the total amount owed on the mortgage loan if that will enable Fannie Mae to reduce the loss it would incur if it foreclosed and acquired the property. (Fannie Mae also will agree to preforeclosure sales for FHA, VA, or RD mortgage loans if they comply with all of the insurer's or guarantor's guidelines and do not result in a loss to Fannie Mae.)

A servicer may pursue a preforeclosure sale at any time prior to the actual foreclosure sale if acquisition of the property is the only alternative to the preforeclosure sale and the proceeds from the sale, along with any mortgage insurance settlement, would make Fannie Mae whole—or, at

least, would result in a loss that would be less than any loss Fannie Mae would incur if it had to acquire and dispose of the property. As long as the proceeds from the transaction make Fannie Mae whole, a servicer may negotiate and complete the preforeclosure sale without Fannie Mae's involvement. However, a servicer must obtain Fannie Mae's prior written approval of any preforeclosure sale that will result in a loss to Fannie Mae.

While pursuing a preforeclosure sale, the servicer will still be expected to follow Fannie Mae's requirements related to the initiation of foreclosure proceedings for defaulted mortgage loans. The servicer must not delay the initiation or continuation of foreclosure proceedings unless it receives prior approval to do so from both Fannie Mae and the mortgage insurer.

To offset a servicer's expenses for handling a preforeclosure sale for a conventional mortgage loan, Fannie Mae will pay the servicer an incentive fee outlined in *Section 604.07, Accounting and Reporting (08/11/08)*, as soon as it receives verification of the completed sale.

**Section 604.01
Identifying Potential
Candidates (01/31/03)**

When analyzing mortgage delinquencies, the servicer must identify those borrowers who are experiencing a financial hardship that prevents them from making their mortgage payments and who can be expected to have difficulty in selling their homes because the current value is probably less than the amount owed on the mortgage loan. The borrower's financial hardship must be the result of an involuntary reduction in income or an unavoidable increase in his or her expenditures—such as a long-term job layoff; a job loss; a mandatory pay reduction; a disability or illness that results in a decrease in income or in major medical expenses; the death of the principal wage earner; or a decline in a self-employed borrower's earnings. However, a borrower will not be eligible for a preforeclosure sale if his or her financial hardship results from circumstances that he or she can control or plan ahead for—such as experiencing a normal seasonal layoff, voluntarily quitting a job or reducing the number of hours worked, or reducing (or eliminating) income as a result of returning to school.

**Section 604.02
Contacting Selected
Borrowers (03/01/09)**

The servicer must contact each borrower that it has identified as a potential candidate for a preforeclosure sale before he or she fails to pay three consecutive payments to discuss all of the foreclosure prevention opportunities that are available—special forbearance plans, delinquency repayment plans, modification of the mortgage loan, selling the property as a mortgage assumption, etc. The servicer must exhaust all other

available means before it discusses a preforeclosure sale with the borrower. At that time, the servicer may describe how the preforeclosure sale process works, making sure that the borrower understands both the benefits and drawbacks of agreeing to a preforeclosure sale. If the foreclosure process has already begun, the servicer must advise the borrower that the foreclosure proceedings will continue even if the property is listed for sale, but that the terms of the preforeclosure sale agreement will be honored as long as the property is sold before the foreclosure sale date. If the foreclosure process has not begun, the servicer must make sure that the borrower understands that listing the property for sale will not delay the initiation of foreclosure proceedings.

The servicer must inform the borrower that, if the sales proceeds are not sufficient to satisfy the mortgage debt, the mortgage holder may require him or her to contribute funds to reduce its loss. (For example, if there are unused funds in the borrower's escrow account, Fannie Mae will require the borrower to waive his or her rights to the funds so that they can be applied toward the indebtedness.) As an alternative, Fannie Mae may agree to permitting the borrower to execute a promissory note for the amount of his or her expected contribution. The servicer must advise the borrower that there may be possible tax consequences if any portion of the outstanding debt is forgiven and refer the borrower to IRS Publication 544, Sales and Other Dispositions of Assets, particularly the section captioned "Foreclosure, Repossession, or Abandonment."

Sometimes a borrower may be reluctant to list his or her property for an amount that is less than that required to satisfy the entire debt unless the servicer provides written assurance that the short payoff will be accepted. When this happens, the servicer must request Fannie Mae's prior approval of the preforeclosure sale before the property is listed. If Fannie Mae approves the sale (subject to receipt of a specific price), the servicer can add the requested assurance as an addendum to the listing agreement.

The servicer must explain to the borrower that he or she is expected to execute all of the documents that are necessary to sell the property—listing agreement, purchase/sales contract, closing documents, etc.—even though the documents will indicate that the sales proceeds must be paid to the mortgage holder. The servicer also must advise the borrower that he or she will remain responsible for maintenance of the property until it is sold and the settlement has occurred.

The servicer must inform the borrower that all sales contracts that will not fully satisfy the outstanding debt must include a contingency clause making the sale of the property “contingent on the mortgage holder’s and the mortgage insurer’s (if applicable) agreement to the sale.” The servicer also must advise the borrower that the following specific cancellation clauses must be included in the listing agreement and sales contract:

- **Listing Agreement:** “Seller may cancel this agreement prior to the ending date of the listing period without advance notice to the broker, and without payment of a commission or any other consideration, if the property is conveyed to the mortgage insurer or the mortgage holder.”
- **Sales Contract:** “The seller’s obligation to perform on this contract is subject to the rights of the mortgage insurer (if any) and the mortgage holder relating to the conveyance of the property.”

If the borrower is agreeable to a preforeclosure sale and the property is listed with a real estate broker, the servicer must ask the borrower to provide the broker’s name, address, and telephone number so the servicer can contact the broker to explain the requirements related to the preforeclosure sale. Closing of preforeclosure sales may not be conditioned upon a reduction of the total commission to be paid to real estate agents to a level below what was negotiated by the listing agent with the borrower, unless the fee exceeds 6 percent of the sales price of the property in aggregate. If the property has not been listed for sale, the servicer may recommend a specific real estate broker to handle the listing, as long as it makes sure that the borrower understands that he or she may select a different broker.

The servicer must request that the borrower submit a letter requesting consideration for a preforeclosure sale and providing information that will document his or her financial hardship (including the servicer’s customized financial form or Fannie Mae’s *Borrower’s Financial Statement* ([Form 1020](#) or [1020\(S\)](#)), the borrower’s most recent paystub or, if the borrower is self-employed, copies of his or her federal income tax returns for the past two years).

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**Section 604.03
Determining Market
Value of Property
(01/31/03)**

The servicer must obtain an appraisal for the property (with both an interior and an exterior inspection) to assist it in evaluating the merits of a preforeclosure sale. Occasionally, Fannie Mae may instruct the servicer to obtain more than one appraisal.

**Section 604.04
Discussing Sale With the
Mortgage Insurer
(01/31/03)**

Once the servicer has obtained the appraisal, it must contact the mortgage insurer (if the mortgage loan is insured) to discuss the possibility of pursuing a preforeclosure sale. In discussing the possibility of a preforeclosure sale with a mortgage insurer, the servicer must keep in mind the conditions under which Fannie Mae will accept a preforeclosure sale. The servicer must not agree to a preforeclosure sale unless the mortgage insurer agrees in writing

- to waive its property acquisition rights before the claim is filed, and
- to settle the claim by paying the lesser of the full percentage option under the terms of the master policy or the amount required to make Fannie Mae whole. (Fannie Mae's "make whole" amount is the sum of the outstanding principal balance, interest accrued at the note rate from the last paid installment date through the expected closing date of the preforeclosure sale, and miscellaneous expenses, less any cash received from the borrower or the property purchaser.)

If the mortgage insurer refuses to consider a preforeclosure sale or offers to settle the claim for an amount that is less than the percentage option or Fannie Mae's "make whole" amount, the servicer must advise its Servicing Consultant, Portfolio Manager, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435.

**Section 604.05
Requesting Fannie Mae's
Approval (01/31/03)**

Since the decision to accept a purchase offer that will involve a loss to Fannie Mae should generally be made within 24 hours of the offer, the servicer needs to provide Fannie Mae with as much information as possible to enable Fannie Mae to perform the analyses it needs to make. Therefore, as soon as a purchase offer is received, the servicer must transmit a description of the borrower's financial circumstances, a property market value analysis (based on the appraisal), the specifics about the purchase offer, and the servicer's recommendation to Fannie Mae through HSSN. At the same time, the servicer must send this information and any required documentation to the mortgage insurer by overnight mail delivery (whenever possible). It is important for both

Fannie Mae and the mortgage insurer to be notified of a sales offer immediately and simultaneously to avoid jeopardizing Fannie Mae's claim under the mortgage insurance contract. A letter including the terms and conditions of Fannie Mae's decision will be available to the servicer through HSSN shortly after Fannie Mae receives the servicer's recommendation.

**Section 604.06
Mortgage Insurance
Claims (01/31/03)**

Servicers must file all primary mortgage insurance claims for preforeclosure sales on all conventional first-lien mortgage loans on which Fannie Mae bears the risk of loss and is insured under a master primary policy issued by any approved mortgage insurer with the exception of Republic Mortgage Insurance Company. The mortgage insurance claim must be filed so that the claims proceeds are sent directly to Fannie Mae. Fannie Mae will file the primary mortgage insurance claims on mortgage loans insured by Republic Mortgage Insurance Company.

Once the mortgage insurance claim is filed, whether by the servicer or by Fannie Mae, the servicer has the following responsibilities:

- removing the mortgage loan from Fannie Mae's investor reporting system with a code 71;
- reporting the proceeds from the sale through Fannie Mae's Cash Remittance System (CRS™) using 310 receipt code;
- providing the mortgage insurer with a copy of the HUD-1 settlement statement, a copy of the valuation, and a copy of the approval letter stating the terms and conditions of any short payoff; and
- submitting a final *Cash Disbursement Request* ([Form 571](#)) for reimbursement via the CRS no later than 30 days following the preforeclosure sale.

Generally, the servicer is not required to take any further action unless it is contacted by Fannie Mae's eviction attorney and asked to provide certain information or documentation. If the servicer fails to provide requested documentation, it will be required to indemnify Fannie Mae for any losses caused by its inaction. As always, the servicer must provide any additional information requested by the mortgage insurer in order to process the claim.

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**Section 604.07
Accounting and
Reporting (08/11/08)**

The servicer must account for all preforeclosure sales and report them to Fannie Mae regardless of whether Fannie Mae is made whole or incurs a loss. The servicer must report the preforeclosure sale in the first delinquency status information it transmits to Fannie Mae after it agrees to the sale (if Fannie Mae will not incur a loss) or the first delinquency status information it transmits to Fannie Mae after Fannie Mae approves a preforeclosure sale that will result in a loss. Once the servicer receives the final signed settlement sheet, the net sales proceeds, any cash contributions, and the executed promissory note (if applicable), it must report the completion of the preforeclosure sale to Fannie Mae through HSSN.

For most mortgage loans, the servicer must code the preforeclosure sale as a “Third-Party Sale” (Action Code 71) in the first monthly Loan Activity Record that it transmits following the preforeclosure sale. The sale proceeds (and any cash contributions) must be remitted to Fannie Mae through the CRS as a special remittance. In addition, the servicer must forward a copy of the HUD-1 settlement statement and a copy of the claim for loss that was filed with the mortgage insurer to the National Property Disposition Center within five business days after the sale. For MBS mortgage loans accounted for under the regular servicing option (and MBS mortgage loans serviced under a shared-risk special servicing option, RD mortgage loans serviced under the regular servicing option, or any mortgage loans subject to some type of recourse or other credit enhancement arrangement), the servicer must report the payoff just as it would report the payoff of any other regular servicing option MBS mortgage loans, since the servicer must absorb any losses and expenses related to the preforeclosure sale.

The servicer should request reimbursement for Fannie Mae’s share of all expenses related to the preforeclosure sale for a conventional mortgage loan—including the incentive fee and the amount required to reimburse the servicer for the appraisal (however, uncollected late charges will not be reimbursed) by submitting a *Cash Disbursement Request* ([Form 571](#)). The servicer must retain the original invoices that support the expenses claimed in the individual mortgage loan file. For MBS special servicing option pool mortgage loans, the servicer should not request reimbursement for Fannie Mae’s share of the amount required to remove the mortgage loan (or participation interest in the mortgage loan) from the pool, since Fannie Mae will automatically reimburse the servicer for this amount after

it remits the funds and reports the applicable action code required to remove the mortgage loan (or participation interest in the mortgage loan) from the pool. (also see *Part X, Section 302.02*)

Fannie Mae will pay servicers an incentive fee upon verification of each successful preforeclosure sale, as follows:

- \$1,500 for (i) preforeclosure sales with net proceeds to value equal to or greater than 92 percent or (ii) preforeclosure sales in situations in which the mortgage insurance claim is projected to make Fannie Mae whole for all losses;
- \$1,250 for preforeclosure sales with net proceeds to value equal to or greater than 90 percent but less than 92 percent; or
- \$1,000 for preforeclosure sales with net proceeds to value of less than 90 percent.

**Section 605
Assignments to the
Insurer or Guarantor
(01/31/03)**

The servicer must assign a delinquent mortgage loan to the mortgage insurer or guarantor if the insurer or guarantor exercises a right under the policy to acquire the mortgage loan. The servicer must report the assignment in the first delinquency status information it transmits to Fannie Mae after it is required by the insurer or guarantor to assign the mortgage loan. Then, when the mortgage loan is actually assigned to the insurer or guarantor, the servicer must file the claim with the insurer or guarantor and report the appropriate action code to Fannie Mae through Fannie Mae's investor reporting system to remove the mortgage loan from Fannie Mae's active accounting records.

**Section 605.01
FHA Mortgage Loans
(09/30/05)**

Fannie Mae will not foreclose or accept a deed-in-lieu of foreclosure for FHA Section 203(k) home improvement loans or mortgage loans insured under FHA Section 240; therefore, assignment is the only way to liquidate those mortgage loans.

HUD has special assignment procedures for FHA Section 235 mortgage loans secured by properties that meet certain criteria. In this case, Fannie Mae can assign all of its interest in the mortgage loan, except the right to foreclose, to HUD. After the "assignment of undivided interest," the servicer must take action to acquire the property either by foreclosing on it or by accepting a deed-in-lieu of foreclosure. Title must then be conveyed

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to HUD. The “assignment of undivided interest” must take place within 30 days after HUD’s required demand letter is sent to the borrower. The servicer must then proceed with the action necessary to liquidate the mortgage loan and file a claim under the insurance contract.

If the various relief measures that are available are unsuccessful for an FHA Section 248 mortgage loan (and foreclosure is the only alternative), the servicer must assign the mortgage to HUD to remain in compliance with all applicable HUD regulations and procedures. The assignment must take place as soon as possible after the 90th day of delinquency. If the mortgage loan is a combination construction-to-permanent mortgage loan that provides for escrowed mortgage payments during the construction term, the servicer should not assign the mortgage until after the borrower fails to make three mortgage payments from his or her own funds—even if the builder defaults under the terms of the construction agreement.

Following assignment of the mortgage, the servicer must file a claim under the insurance contract.

To remove a mortgage loan that has been assigned to HUD from Fannie Mae’s active accounting records, the servicer must report through Fannie Mae’s investor reporting system Action Code 65 (repurchase) if the mortgage loan was sold to Fannie Mae “with recourse” or is part of a regular servicing option MBS pool, or Action Code 72 if the mortgage loan is one Fannie Mae holds in its portfolio or is part of a special servicing option MBS pool.

Section 605.02
FHA Title I Loans
(01/31/03)

Should a borrower default under an FHA Title I loan, the servicer must assign the loan to HUD and remain in compliance with all applicable HUD regulations and procedures. In addition, there may be instances where Fannie Mae pursues foreclosure prevention alternatives for FHA Title I loans. In those cases, the servicer must contact its Servicing Consultant, Portfolio Manager, or Fannie Mae’s National Servicing Organization’s Servicing Solutions Center at (888) 326-6435.

The servicer must notify Fannie Mae about the assignment by reporting the applicable action code to Fannie Mae through Fannie Mae’s investor reporting system—an Action Code 65 (repurchase) if the Title I loan was sold to Fannie Mae “with recourse” or an Action Code 72 if the Title I loan was sold to Fannie Mae “without recourse.” If the servicer reports a

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repurchase (Action Code 65), it must remit sufficient funds to repurchase the Title I loan from Fannie Mae. (also see *Part VI, Chapter 2*, and *Part VIII, Section 205*)

**Section 605.03
HUD Section 184
Mortgage Loans
(09/30/05)**

When foreclosure is the only alternative for a defaulted HUD-guaranteed Section 184 mortgage loan, the servicer must assign the mortgage to HUD for the commencement of foreclosure proceedings if the mortgage loan is one Fannie Mae holds in its portfolio or is part of a special servicing option MBS pool. However, if the mortgage loan is part of a regular servicing option MBS pool, the servicer may choose either to assign the mortgage to HUD for the commencement of foreclosure proceedings or to assign the mortgage to HUD without the pursuit of foreclosure. (If the servicer chooses the latter option, HUD will immediately settle the insurance claim, by paying the servicer 90 percent of the loan guarantee amount, instead of waiting until after the foreclosure is completed.) The assignment must take place as soon as possible after the 90th day of delinquency. The servicer must file a claim under HUD's loan guarantee following the assignment of the mortgage.

To remove the mortgage loan from Fannie Mae's active accounting records, the servicer must report an Action Code 65 (repurchase) through Fannie Mae's investor reporting system if the mortgage loan was sold to Fannie Mae "with recourse" or is part of a regular servicing option MBS pool or an Action Code 72 if the mortgage loan is one Fannie Mae holds in its portfolio or is part of a special servicing option MBS pool.

**Section 605.04
VA Mortgage Loans
(01/31/03)**

After the VA receives a notice of default, it may instruct the servicer to assign the mortgage and transfer the security to the VA (or to a designated third party) in return for VA's payment of the total outstanding indebtedness due as of the date of the assignment. This action—which VA calls a refunding of the mortgage loan—is designed as an alternative to foreclosure in instances in which VA believes that the default can be cured through various relief measures even though the servicer is unable or unwilling to grant further relief. If the VA decides that a refunding of the mortgage loan is in order, it will ask the servicer to submit a Statement of Account (VA Form 26-567) and to order an appraisal of the property (if one has not already been ordered or obtained in connection with the default).

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The servicer does not need to obtain Fannie Mae's prior approval for the refunding of a VA mortgage loan. Instead, the servicer must follow VA's explicit instructions for assigning the mortgage for refunding and transferring the security since the failure to comply with VA's instructions may result in a loss of the loan guaranty. Fannie Mae will hold the servicer accountable for any loss Fannie Mae incurs because it failed to assign a VA-guaranteed mortgage loan for refunding when the VA instructed it to do so.

When the VA decides to refund a mortgage loan, it will provide a formal notification to both the servicer and the borrower. The VA regional office that has jurisdiction over the case will provide specific instructions to the servicer regarding VA's payment of the outstanding indebtedness for the transfer of the refunded mortgage loan. The servicer must prepare a Claim Under Loan Guarantee ([VA Form 26-1874](#)) and submit it and any required supporting documentation to the applicable VA regional office.

The servicer must report an Action Code 72 through Fannie Mae's investor reporting system to remove a mortgage loan that has been assigned to VA from Fannie Mae's active accounting records.

Section 605.05
Conventional Mortgage
Loans (01/31/03)

The servicer must assign a delinquent conventional first-lien mortgage loan to the mortgage insurer if the insurer exercises rights it has under the policy to acquire the mortgage loan. The servicer must take whatever action is necessary to obtain payment under the insurance policy.

After a mortgage insurer receives a notice of default for an insured conventional second-lien mortgage loan, it may instruct the servicer to assign the delinquent second-lien mortgage loan to it, rather than continuing the foreclosure process. In such cases, the servicer must prepare the necessary legal documents to assign the second-lien mortgage loan and file a claim under the insurance contract.

The servicer must report an Action Code 72 through Fannie Mae's investor reporting system to remove a mortgage loan that has been assigned to the mortgage insurer from Fannie Mae's active accounting records.

**Section 606
Deeds-in-Lieu of
Foreclosure (01/31/03)**

The servicer may consider accepting a deed-in-lieu of foreclosure from a borrower who is experiencing a permanent financial hardship if other relief measures or foreclosure prevention alternatives are not feasible. However, the servicer must make every effort to collect some portion of the delinquent installments from the borrower in order to reduce Fannie Mae's loss. The servicer must require the borrower to submit a letter to request acceptance of a deed-in-lieu of foreclosure, to provide documentation related to his or her financial hardship, and to acknowledge that acceptance of a deed-in-lieu of foreclosure would be an accommodation to him or her.

To assist Fannie Mae in evaluating the condition and value of the property, Fannie Mae requires the servicer to obtain an appraisal. (Fannie Mae will reimburse the servicer for the required appraisal report.) If the property inspections reveal that the property has been poorly maintained, needs major repairs, or has structural or foundation problems, Fannie Mae may permit the borrower to discontinue efforts to sell the property since there will be little likelihood of getting a good purchase offer quickly.

The servicer of a seriously delinquent first-lien mortgage loan may recommend that Fannie Mae accept a voluntary deed-in-lieu of foreclosure from the borrower if

- the servicer determines that the pursuit of a deficiency judgment is not practical or warranted;
- the property has been listed for sale at a market value for three months or more without a reasonable sales offer;
- there may be legal impediments to pursuing foreclosure;
- acceptance of the deed-in-lieu of foreclosure will enable Fannie Mae to acquire the property earlier than it would under a foreclosure action;
- the mortgage insurer or guarantor has agreed to the acceptance of a deed-in-lieu of foreclosure;
- the borrower is not paid to deed the property over to Fannie Mae (although Fannie Mae might approve a small payment in special circumstances);

- the borrower can convey acceptable marketable title (a title insurance policy will be required);
- the property is vacant (unless eligible for the Deed-for-Lease program or the mortgage insurer or guarantor has agreed to accept an occupied property);
- the property is not subject to liens (subordinate or otherwise) held by others, judgments, or attachments (although Fannie Mae might agree to pay off a lien in special circumstances); and
- the borrower agrees to assign and transfer to Fannie Mae any rents if the property is rented, and the servicer agrees to collect any rental income.

The servicer of a seriously delinquent second-lien mortgage loan must coordinate with the first-lien mortgage loan servicer regarding any proposed action related to the acceptance of a deed-in-lieu of foreclosure. It must determine the status of the first-lien mortgage loan, the intentions of the first-lien mortgage loan servicer, and the possibility of a mutually arranged disposition. The servicer must also order an Owner and Encumbrance Report to ensure that there are no other outstanding liens. If Fannie Mae does not have an interest in the first-lien mortgage loan, the servicer must include with its recommendation an analysis of the first-lien mortgage loan servicer's intentions and the possibility of recovery on the second-lien mortgage loan. If Fannie Mae has an interest in both the first- and second-lien mortgage loans, the servicer may recommend that Fannie Mae accept a voluntary deed-in-lieu of foreclosure from the borrower if the eligibility criteria specified above for a first-lien mortgage loan are met.

The servicer must obtain Fannie Mae's prior approval to accept any offer of a deed-in-lieu of foreclosure. To request Fannie Mae's approval, the servicer must transmit a description of the borrower's financial circumstances, a property valuation, general summary information about satisfaction of the eligibility criteria for deed-in-lieu of foreclosure, an indication of whether the borrower can make a cash contribution to reduce Fannie Mae's loss (or is willing to execute a promissory note for the amount of any required contribution), and its recommendation to Fannie Mae through HSSN.

A letter including terms and conditions of Fannie Mae's decision about acceptance of the deed-in-lieu of foreclosure will be available to the servicer through HSSN shortly after Fannie Mae receives the servicer's recommendation. If Fannie Mae approves the servicer's recommendation to accept the deed-in-lieu of foreclosure, the servicer must have its attorney prepare the deed of conveyance and file a claim with the insurer or guarantor. (also see *Part VIII, Section 104.03*, and *Chapter 2*)

Once the servicer receives the executed deed-in-lieu of foreclosure, any cash contribution, and the executed promissory note (if applicable), it must report the completion of the deed-in-lieu to Fannie Mae through HSSN. The servicer also must comply with the requirements for reporting a property acquisition to the credit bureaus, Fannie Mae, and the Internal Revenue Service that are described in *Part VIII*.

For each completed deed-in-lieu of foreclosure for a conventional mortgage loan, Fannie Mae will pay the servicer a \$1,000 incentive fee. Fannie Mae also will reimburse the servicer for attorneys' fees (of up to \$350) and for any of the costs for obtaining a title update that the borrower is unable to pay. Requests for the payment of this incentive fee or for reimbursement of any attorneys' fees or other expenses associated with the acceptance of a deed-in-lieu of foreclosure should be submitted to Fannie Mae on a *Cash Disbursement Request* ([Form 571](#)). Attorneys' fees for deeds-in-lieu of foreclosure must be entered as Deed-in-Lieu fees when submitting ([Form 571](#)).

When Fannie Mae agrees to accept a deed-in-lieu of foreclosure, the servicer must report the acceptance of the deed-in-lieu of foreclosure in the next delinquency status information it transmits to Fannie Mae after the date of Fannie Mae's decision. The servicer also must report through Fannie Mae's investor reporting system either an Action Code 70 (for an uninsured conventional mortgage loan) or an Action Code 72 (for any other type of mortgage loan) to remove the mortgage loan from Fannie Mae's active accounting records. If Fannie Mae denies the request for a deed-in-lieu of foreclosure and instructs the servicer to pursue foreclosure, the servicer must report the initiation of foreclosure in the next delinquency status information it transmits to Fannie Mae after the date of Fannie Mae's decision.

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**Section 606.01
Deed-for-Lease Program
(11/05/09)**

Fannie Mae's Deed-for-Lease program allows borrowers of properties transferred through a deed-in-lieu of foreclosure to remain in their home and community by executing a lease in conjunction with a deed-in-lieu of foreclosure. To qualify, the borrower must have the ability to pay market rent not to exceed 31 percent of his or her monthly gross income.

With the Deed-for-Lease program, servicers are expected to follow their regular process in considering a borrower for deed-in-lieu of foreclosure in accordance with Fannie Mae's workout hierarchy. Once the servicer determines a borrower is eligible for a deed-in-lieu of foreclosure through its normal course of business, the servicer will notify Fannie Mae that the borrower may also be eligible for the Deed-for-Lease program based on an initial screen of predetermined eligibility criteria. Fannie Mae, or its designee, will take the steps necessary to further verify property and borrower eligibility, determine rental rate, and, if appropriate, execute the lease agreement. The lease agreement will be contingent on successful completion of the deed-in-lieu of foreclosure.

In general, the servicer's responsibilities regarding the Deed-for-Lease program are as follows:

- When considering a deed-in-lieu of foreclosure, the servicer will screen the borrower in accordance with *Section 606.01.01, Eligibility (11/05/09)*.
- If the borrower passes this initial screening, the servicer will determine if there is an interest on the part of the borrower in being considered for a Deed-for-Lease.
- The servicer will notify Fannie Mae when there is an interest and provide the loan number, borrower name, address, and contact number to Fannie Mae. Fannie Mae, through its designee, will then contact the borrower, visit the property, and evaluate both for a lease.
- Fannie Mae will inform the servicer whether or not a lease was finalized and whether the deed-in-lieu of foreclosure is contingent on the property being vacant.
- The servicer will then finalize the deed-in-lieu of foreclosure accordingly.

- The servicer will notify Fannie Mae if a deed-in-lieu of foreclosure is not successfully executed for any case that was approved for Deed-for-Lease consideration.

**Section 606.01.01
Eligibility (11/05/09)**

Servicers may recommend Deed-for-Lease to Fannie Mae for any conventional mortgage loan that is held in Fannie Mae's portfolio or that is part of an MBS pool that has the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property (referred to as Fannie Mae mortgage loans) so long as the following program eligibility criteria are met:

- The mortgage loan is a first-lien mortgage loan secured by a single-family property including detached homes, condominiums, cooperative share loans, manufactured homes, and two- to four-unit properties. Second-lien mortgage loans are not eligible.
- The mortgage loan is not guaranteed, insured, or held by a federal government agency (FHA, HUD VA, or RD).
- The borrower resides in the property as a principal residence or has leased the property to a tenant(s) who uses the property as a principal residence. Second homes or vacation homes are not eligible.
- At least three payments have been made since origination or since the last modification.
- The mortgage loan does not have 12 or more payments past due when referred to Fannie Mae for Deed-for-Lease consideration.
- The borrower is not involved in an active bankruptcy proceeding or party to litigation involving the subject property or mortgage loan.
- Marketable title is able to be conveyed (a title insurance policy is required).
- If there are subordinate liens secured against the subject property, subordinate-lien releases can be obtained.
- The occupant has verifiable income. Unemployed occupants with no source of income are not eligible.

Fannie Mae, or its designee, will take the necessary steps to further verify property and occupant eligibility as follows:

Property Eligibility

- There are no zoning or homeowners' association (HOA) rental limitations that would prohibit a Deed-for-Lease.
- Repairs required to make the property habitable are deemed to be in an acceptable amount based on the property value.
- The property is in compliance with local rules and laws or can be brought into compliance within 30 days.
- The property is not within a target area for any corporate, government, or community neighborhood stabilization plan which may need the property as part of the plan for purposes other than residential.
- The rental income is anticipated to cover ongoing maintenance and management costs.

Occupant Eligibility

- Income is sufficient to cover rental payments of not more than 31 percent of gross income. If the current market rent is greater than 31 percent of the borrower/tenant's monthly gross income, a lease will not be offered.
- Inspection of the property indicates that the occupants have been keeping the property in good condition.
- The occupant agrees to be responsible for regular maintenance, to keep the property in good condition, and to permit marketing of the property for sale.
- The number of occupants is appropriate for the home and in compliance with local laws and homeowners' association rules.
- If pets are present, renter's insurance is obtained if required.

- The occupants signing the lease must agree to a credit review and all residents over 18 years of age must have an acceptable background check, including receiving clearance from the Office of Foreign Assets Control (OFAC).
- There are no signs or reports of illegal activities conducted at the property.
- The property is to be used as a principal residence.

**Section 606.01.02
Standard Documents
(11/05/09)**

Servicers are strongly encouraged to use the documents available on eFannieMae.com. Documents include the following:

- [*Deed for Lease Instruction Sheet for Homeowners*](#)
- *Deed for Lease Program Referral Form* ([Form 187](#))
- *Deed for Lease Program Cancellation Form* ([Form 188](#))

**Section 606.01.03
Deed-for-Lease Process
(11/05/09)**

The Deed-for-Lease process includes numerous steps, communication, and coordination on the part of the servicer, the borrower, Fannie Mae, and a property manager (designated by Fannie Mae). Servicers must follow the interim process as outlined in the Deed-for-Lease Interim Instructions for Servicer available on eFannieMae.com until an automated process is developed and implemented.

Note: Prior to acceptance of a deed-in-lieu of foreclosure in connection with the Deed-for-Lease, the servicer must ensure that the borrowers execute in favor of Fannie Mae, the servicer, and their agents a general release of all claims arising prior to the acceptance of the deed-in-lieu of foreclosure which relate in any way to the mortgage loan or the property.

Delegation of Authority

For non-delegated cases, where Fannie Mae makes the decision, the servicer has five weeks from Fannie Mae's approval of the deed-in-lieu of foreclosure to complete the transaction. This allows enough time for the lease approval process.

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For delegated servicers that might have a shorter processing timeframe, they will be instructed to allow time for the lease approval process when the borrower states an interest.

**Section 607
VA No-Bid Buydowns
(01/31/03)**

When the VA determines that the net value for a property is less than the unguaranteed portion of the indebtedness for a VA-guaranteed mortgage loan, it will not specify an amount for the servicer to bid at the foreclosure sale and will not accept conveyance of the property. The VA, however, will reconsider its no-bid decision if the mortgage loan holder agrees to waive or satisfy a portion of the indebtedness to reduce it to an amount that would result in the net value of the property exceeding the unguaranteed portion of the indebtedness. The mortgage holder's waiver may take the form of a reduction in the UPB; a credit to the borrower's escrow or unapplied funds account; a forgiveness of unpaid, accrued interest; or any combination of these credits. Generally, the VA requires that a decision for a partial waiver or satisfaction of indebtedness be agreed to by both the borrower and the mortgage holder.

Fannie Mae requires the servicer to evaluate whether a VA no-bid buydown is feasible and makes sound economic sense by comparing the amount needed to buy down the debt to the level at which the VA will be willing to accept conveyance of the property to the loss Fannie Mae might expect from acquiring and disposing of the property. (Fannie Mae's expected loss will depend on many factors, such as property location and condition, market conditions, and holding time and costs.) The servicer also must assure itself that the proposed action will not affect the validity of the foreclosure or the validity of the indebtedness that will be established against the borrower, that the proposed action will be binding on all parties, and that Fannie Mae's recovery of the full claim amount due Fannie Mae under the VA guaranty will not be jeopardized.

VA's no-bid letter will advise the servicer of VA's determination of the net value of the property and the cutoff date that will be used for establishing VA's guaranty liability. It is possible that a servicer may not receive VA's no-bid letter until after the cutoff date has passed. In such cases, the servicer must contact the VA to request a revised cutoff date to ensure that Fannie Mae has sufficient time to evaluate the servicer's debt-reduction recommendation. The servicer does not need to request a revised cutoff date if it believes that it has sufficient time to obtain Fannie Mae's approval to the no-bid buydown and reschedule the foreclosure sale.

To request Fannie Mae's approval of a VA no-bid buydown, the servicer must transmit its recommendation (and information about the date of the foreclosure sale and other factors that might affect Fannie Mae's decision) to Fannie Mae through HSSN. A letter including terms and conditions of Fannie Mae's decision about the VA no-bid buydown will be available to the servicer through HSSN shortly after Fannie Mae receives the servicer's recommendation.

If Fannie Mae does not agree to the no-bid buydown, the servicer must follow Fannie Mae's general procedures related to the amount to bid at the foreclosure sale, filing claims under the VA guaranty, and managing the acquired property. If Fannie Mae agrees to the VA no-bid buydown, the servicer must follow the debt-reduction procedures established by the applicable VA regional office, as well as the procedures Fannie Mae generally has in effect for properties that are conveyed to the VA. The servicer also must report the VA no-bid buydown in the next delinquency status information it transmits to Fannie Mae after the date of Fannie Mae's decision to authorize the buydown. (also see *Part VIII*)

**Section 608
Second-Lien Mortgage
Loan Charge-Offs
(01/31/03)**

When Fannie Mae's mortgage is in a second-lien position, there may be instances in which it may not be in Fannie Mae's best interests to pursue collection efforts or legal actions against the borrower. If the servicer of a second-lien mortgage loan believes that this is the case, it must transmit a recommendation for resolving the second-lien mortgage loan delinquency to Fannie Mae through HSSN. Before the servicer makes a specific recommendation, it must measure Fannie Mae's outstanding debt against

- the estimated cost of continued collection efforts;
- the estimated cost of any required legal actions;
- the status, UPB, and ownership of the first-lien mortgage loan;
- the mortgage insurer's policy regarding the filing of an insurance claim when the debt is abandoned (if the mortgage loan is insured);
- the condition of the property and the estimated market value for the property; and
- the borrower's ability to reinstate the mortgage loan(s).

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Fannie Mae's decision on whether or not to charge off the second-lien mortgage debt will depend on whether Fannie Mae also has an interest in the first-lien mortgage loan. When Fannie Mae has an interest in both mortgage loans, it may choose to consolidate the two mortgage loans and modify the borrower's payments instead of charging off the debt. When another investor holds the first-lien mortgage loan, Fannie Mae may decide to pursue a workout for the second-lien mortgage loan, pay off the first-lien mortgage loan and foreclose the second-lien mortgage loan, or charge off the second-lien mortgage debt. A letter including terms and conditions of Fannie Mae's decision will be available to the servicer through HSSN shortly after Fannie Mae receives the servicer's recommendation.

The servicer must report that Fannie Mae is considering the options for resolving a second-lien mortgage loan delinquency in the next delinquency status information it transmits after it submits its recommendation to Fannie Mae. If Fannie Mae decides to pursue a workout arrangement or to initiate foreclosure proceedings, the servicer must report this in the next delinquency status information it submits after the date of Fannie Mae's decision. The servicer must report through Fannie Mae's investor reporting system an Action Code 71 during its next reporting cycle if Fannie Mae authorizes the charge-off of the second-lien mortgage debt.

**Section 609
HomeSaver Advance
(06/16/08)**

The intent of a HomeSaver Advance (HSA) is to allow a delinquent borrower, who is able to make future scheduled payments but is unable to pay past-due amounts over a short time frame, to cure the delinquency by entering into a new unsecured loan for the arrearage amount. HSA is the preferred option to a capitalization-only modification. HSA is documented by the execution of an unsecured promissory note.

**Section 609.01
Eligibility Criteria
(06/16/08)**

Any MBS mortgage loan that is purchased or securitized by Fannie Mae (including a Pooled from Portfolio mortgage loan) as well as any whole mortgage loan that is held in Fannie Mae's portfolio is considered eligible for the HSA foreclosure prevention option if all of the following eligibility criteria are met.

Mortgage Loan Eligibility

- The mortgage loan must be a first lien, including cooperative share loans.
- The first-lien mortgage loan may secure a principal residence, second home, or investment property. Owner occupancy is not required.
- At least six monthly payments have been paid on the existing first-lien mortgage loan since the date of loan closing.
- At least two full monthly payments of PITI (or P&I only if T&I are not escrowed) are due and unpaid. Two payments are considered to be past due on the 32nd day after the due date of the first unpaid installment. There is no maximum delinquency criteria for the use of the HSA option; however, the HSA may not be used to reinstate a foreclosed first-lien mortgage loan (for example, during a foreclosure redemption period).
- If the first-lien mortgage has previously been modified, the borrower must have made at least 12 payments since the date of the modification.
- The first-lien mortgage loan must not be an FHA-insured mortgage loan. Servicers of FHA-insured mortgage loans must utilize FHA's Partial Claim foreclosure prevention option in lieu of the HSA, if applicable. Mortgage loans guaranteed by the Department of Veterans Affairs and the USDA Rural Development's Guaranteed Loan Program are eligible for an HSA.

The HSA loan is not secured by real estate and, therefore, does not have a loan-to-value restriction and no property valuation is required.

Borrower Eligibility

If the first-lien mortgage loan is eligible for an HSA, the servicer must ensure that the borrower meets all of the qualifications listed below.

- The borrower must have successfully resolved the reason for delinquency.

- The borrower must demonstrate a long-term financial capacity to resume making the payments on the first-lien mortgage loan, any subordinate mortgage loans, the HSA loan, and all other monthly obligations, (including personal debts, revolving accounts, installment loans, and normal monthly living expenses, such as food, utilities, etc.).
- The borrower must have surplus income to support payments due under the first-lien mortgage loan, subordinate liens, the HSA note, and all other monthly obligations, plus at least \$200 in monthly net income after expenses. Cases in which the borrower will have less than \$200 in monthly net income after expenses may be submitted through the HSSN Workout Profiler™ for Fannie Mae review and decision as a Non-Delegated HSA. Refer to *Section 609.06, Servicer Responsibilities (06/16/08)*, for instructions on how to calculate net income after expenses.
- The borrower must not have the ability to cure the arrearage using a standard repayment plan with a period of nine months or less.
- The borrower must be willing to execute an HSA note and agree to the terms of repayment.
- The borrower must not have previously obtained an HSA in connection with their delinquent first-lien mortgage loan; the HSA option may only be utilized once during the term of a first-lien mortgage loan.
- The borrower may have no more than two HSA notes outstanding on separate first-lien mortgage loans at one time, and the borrower must not have an active, unpaid HSA loan that was issued in connection with a property that has previously been sold.
- The borrower must not be currently involved in an active bankruptcy proceeding.
- The borrower may not have received a Chapter 7 bankruptcy discharge in a case involving the first-lien mortgage loan, unless the mortgage debt was reaffirmed under the applicable legal standard.

**Section 609.02
Servicing Options
(06/16/08)**

For first-lien mortgage loans owned or securitized by Fannie Mae and serviced under the special servicing option:

- The HSA loan will be serviced by a designated third-party servicer. Refer to *Section 609.12, Third-Party Servicer of HSA Notes (06/05/09)*, for additional information.
- Fannie Mae will compensate servicers for the successful completion of an HSA by paying a \$700 incentive fee to servicers. The following criteria must be met:
 - The HSA must meet all the eligibility criteria. Fannie Mae will review the information provided by the servicer to determine compliance with eligibility.
 - The borrower must make the first three full monthly payments that are due after the HSA is closed. These three payments must be made within the month due.

The HSA incentive fee will be paid as follows: An initial \$200 payment will be sent to the servicer upon Fannie Mae's certification of the executed and delivered HSA note as in compliance with the HSA eligibility criteria. The remaining \$500 payment will be sent to the servicer within 30 days after the borrower has made the required three monthly payments as reflected in Fannie Mae's servicing system.

Fannie Mae will review eligibility for the HSA incentive fee and make the final determination based on information provided by the servicer; therefore, servicers need not submit requests for payment of HSA incentive fees. HSA incentive fees on eligible mortgage loans will be sent to servicers on a monthly basis.

For regular servicing option MBS mortgage loans, the servicer may utilize HSA. However:

- Fannie Mae will not advance the HSA funds to cure the delinquency. The servicer must advance its own funds to reinstate the mortgage loan, and have an HSA note executed payable to the servicer.
- The servicer must service the HSA note.

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**Section 609.03
Legal Requirements and
HSA Loan Documents
(06/05/09)**

- No incentive fee will be paid by Fannie Mae.

Fannie Mae requires servicers to comply with any legal requirements applicable under local, state or federal law or regulation, including, but not limited to, licensing, disclosure or notice requirements, and the requirements of Fannie Mae's *Selling Guide* and *Servicing Guide*. For example, Arizona's lending laws would preclude a servicer licensed as an Arizona Consumer Lender that is not a national bank, savings association, or credit union from granting a consumer loan of \$6,000 or less with a loan term of 180 months. Servicers with questions related to legal requirements applicable to the origination of the HSA note should contact their legal counsel or call Fannie Mae's Servicing Solutions Center at 1-888-326-6438 (option 2 – Servicing).

The selling warranties set forth in the Mortgage Selling and Servicing Contract apply to the sale of each HSA to Fannie Mae.

The borrower must execute the appropriate *HomeSaver Advance Truth-in-Lending Disclosure Statement and Promissory Note* ([Form 3721](#) or [Form 3721.33](#) as applicable, referred to as the "HSA note"). Upon execution of the HSA loan documents, the servicer of the first-lien mortgage loan will verify that the HSA note is fully and legally executed, and the information set forth in the HSA note is complete and accurate. The form of the HSA note shall not be revised or amended except as necessary to comply with applicable federal, state, and local laws and regulations. The servicer will endorse the note "in blank" as set forth in the *Selling Guide, Chapter B8-3, Notes*, and transmit the original HSA note to Fannie Mae's Custodial Department via overnight courier (*Section 609.09, Delivery of Documents and Funding (06/05/09)*).

The HSA note form is posted on Fannie Mae's Web site for viewing, printing, or downloading in Microsoft® Word® and PDF formats. In addition, there is a Summary document for each instrument that includes instructions on completion of the form. Servicers may access these forms at eFannieMae.com.

**Section 609.04
HSA Required Note
Provisions (06/16/08)**

The following provisions apply to all HSAs:

- The HSA proceeds must fully reinstate the first-lien mortgage loan,

and the servicer is required to advance the last paid installment date to bring the mortgage loan current.

- The HSA funds may be used to pay only delinquent principal, interest, tax and insurance deposits, escrow advances, as well as foreclosure and bankruptcy fees and costs that would otherwise be reimbursed by Fannie Mae, if applicable. The servicer may also include in the HSA the amount of advances to pay delinquent homeowners' association dues required to protect Fannie Mae's first-lien mortgage loan. The servicer may include up to 6 months of such advances if paid monthly (and up to one year if paid annually) in the amount of the HSA. For first-lien mortgage loans for which Fannie Mae bears the risk of loss (including mortgage loans sold to Fannie Mae for cash and Pooled from Portfolio mortgage loans), the amount of the HSA note may not exceed the lesser of 15 percent of the original UPB of the first-lien mortgage loan or \$15,000.00. Exceptions to this maximum amount may be made by Fannie Mae. Servicers may submit Non-Delegated HSA cases that exceed the HSA limits through the HSSN Workout Profiler for Fannie Mae's decision. For first-lien mortgage loans in which the lender bears the full risk of loss, the amount of the HSA note may not exceed the lesser of 15 percent of the original loan amount or \$20,000.00.
- The minimum amount of an HSA note is \$1,000.01.
- The servicer may not include late charges or any other ancillary fees and costs in the amount of the HSA. Servicers must waive any late payment charges associated with the current delinquency to provide further relief to HSA borrowers. Fannie Mae encourages servicers to waive all previously assessed and unpaid late charges associated with a prior delinquency as well as other fees and costs (other than those addressed above) remaining owed after application of the HSA funds to the delinquent first-lien mortgage loan.
- All parties who signed the first-lien mortgage loan must execute the HSA note.

Repayment Terms

- HSA notes have a term of 15 years.

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- The HSA note will not accrue interest and requires no payment for the first 6 months of the term.
- Thereafter, payments will equal the HSA note amount plus the annual interest rate of 5 percent amortized over 174 months.
- Any amounts remaining owed become fully due and payable upon borrower's sale or transfer of the property securing the first-lien mortgage loan other than by operation of law. The note is not due and payable upon refinancing of the first-lien mortgage loan.
- Prepayment fees are not permitted.
- The HSA note must accrue interest in arrears and have a payment due date of the first day of the month. The six-month period of zero interest rate accrual will begin on the first day of the month following execution of the HSA note. Interest will begin to accrue on the first day of the seventh month, with the first payment due on the first day of the eighth month after the HSA note is executed.

Example:

If an HSA note is executed on February 15, 2008, the six-month period of zero interest rate accrual begins on March 1, 2008. Interest will begin to accrue on September 1, 2008, with the first payment due on October 1, 2008.

Section 609.05
Correction of HSA
Funding Errors (06/16/08)

If the amount of the HSA results in more than what is needed to cure the allowable arrearages on the first-lien mortgage loan, the amount of the overage may not be paid to the borrower or applied to the outstanding first-lien mortgage loan. The servicer must contact the National Servicing Organization's Servicing Solutions Center for further guidance. If the amount of the HSA results in less than what is needed to cure the allowable arrearages and the borrower cannot afford to contribute the amount of the difference, the HSA must be corrected or cancelled and re-originated.

Fannie Mae may periodically review the disposition of HSA proceeds to ensure that the proceeds were appropriately applied to allowable arrearages. If the proceeds were applied to pay unauthorized amounts, or

otherwise originated improperly, Fannie Mae may demand that the originating servicer repurchase the HSA.

**Section 609.06
Servicer Responsibilities
(06/16/08)**

The servicer must calculate the monthly net income after expenses by comparing the borrower's combined monthly net income from wages and all other identified sources of income to the borrower's monthly obligations (as previously defined in *Section 609.01, Eligibility Criteria (06/16/08)* under "Borrower Eligibility") for the same period, making necessary adjustments for income fluctuations. For ARM loans scheduled to adjust within the next 12 months, the servicer must project the borrower's net income after expenses using an anticipated mortgage payment based on the current rate plus the amount of the cap by which the interest rate can change on any given adjustment date. For both fixed-rate mortgage loans and ARM loans, if the calculation of monthly net income after expenses is less than \$200, the HSA option may not be used without prior approval from Fannie Mae. For the HSA option, the use of verbal financial information from the borrower is acceptable.

Borrowers must be encouraged to contribute available funds toward paying down the delinquency, thereby reducing the amount of the HSA note. Servicers may not assess any fees or charges to the borrower or third-party servicer with respect to HSA.

If the servicer elects not to waive the remaining late charges and other fees and costs from a previous delinquency, and instead engages in a payment plan or other collection efforts for the unpaid charges, the monthly payment plan amount must be considered in the calculation of the borrower's net income after expenses. The servicer cannot impose a payment plan if it reduces the monthly net income after expenses to less than \$200, and the servicer cannot deny the borrower an HSA for failure to pay those charges or make satisfactory payment arrangements for those charges. The servicer must disclose in writing any late charges and other fees and costs from a previous delinquency that will remain after the application of the HSA funds.

For first-lien mortgage loans with an HSA, servicers are reminded that if the borrower has waived an escrow deposit account and the borrower subsequently fails to pay the taxes and/or insurance when due (and the servicer advances its own funds to pay any outstanding bills), the servicer must revoke the waiver and begin collecting funds for an escrow deposit

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account to pay future bills. Refer to *Part III, Section 103, Escrow Deposit Accounts*, for additional information.

Section 609.07
Submitting HSA Loans to
Fannie Mae (06/16/08)

The servicer must report the HSA using delinquency status code 19 – Partial Reinstatement – in HSSN to indicate that the servicer is working with the borrower to facilitate an HSA in order to avoid foreclosure. A servicer must continue to report each month that the borrower is being considered for an HSA until the first-lien mortgage loan becomes current, liquidated, or the borrower fails to execute and return the HSA note within thirty days of transmittal or otherwise demonstrates unwillingness to agree to an HSA.

When servicers have determined that the borrower meets all eligibility criteria and have executed an HSA note with a borrower, they must submit the closed case information through HSSN's Create/Submit a Closed HomeSaver Advance Case. Servicers should not submit closed, Delegated HSA cases until all required documents have been executed by and received from the borrower.

Servicers are encouraged to submit loan, borrower, and financial information on any potential HSA case that does not meet the eligibility guidelines described herein through the HSSN Workout Profiler for Fannie Mae's consideration.

Example 1: The borrower does not have a monthly net income after expenses of \$200 or greater. The servicer should submit this mortgage loan through Workout Profiler as a Non-Delegated HSA.

Example 2: The proposed HSA note amount exceeds the lesser of 15 percent of the original UPB or \$15,000. The servicer should submit this mortgage loan through Workout Profiler as a Non-Delegated HSA case.

Section 609.08
Fannie Mae's Response
to Submitted Cases
(06/05/09)

A Delegated HSA case successfully submitted as a closed HSA case to HSSN will get a response that the case has been submitted and closed successfully. A Non-Delegated case successfully submitted through Workout Profiler will receive a status of "Awaiting Review" until Fannie Mae makes a decision regarding the HSA workout option. Fannie Mae will notify the servicer by email when a decision is made. Assuming a servicer receives approval from Fannie Mae, issues the HSA note to the

borrower, and the borrower returns the executed HSA note, the servicer may close the case by selecting the Close Approved Cases link in HSSN.

**Section 609.09
Delivery of Documents
and Funding (06/05/09)**

Servicers who utilize the HSA workout option must be able to prepare and coordinate execution of the HSA notes and deliver them to Fannie Mae, New Loan Submissions, 13150 Worldgate Drive, Herndon, VA 20170.

The servicer of the first-lien mortgage loan must deliver the original HSA note to Fannie Mae via overnight courier for first morning delivery on the same day that the HSA case is closed in HSSN. The servicer must provide a completed HomeSaver Advance Delivery Inventory available on eFannieMae.com for every delivery package of HSA note(s) submitted to Fannie Mae. Servicers should note that the HSA Delivery Inventory contains non-public and confidential information and must be handled in a secure manner. If an HSA note is first received more than thirty days after the execution date, Fannie Mae may, in its sole and absolute discretion, choose to consider the HSA note null and void. Time extensions may be granted by Fannie Mae's National Servicing Organization in the event document delivery is delayed by events beyond the control of the servicer.

Fannie Mae will validate that the HSA loan data submitted by the servicer on HSSN matches the HSA note submitted by the servicer. In addition, Fannie Mae, or its designee, will validate proper signature execution and endorsement of the HSA note. Certification will be completed by Fannie Mae within one business day, provided the documentation is accurate and complete.

Fannie Mae will not fund the HSA loan until the related HSA note has passed certification without any error. Fannie Mae will communicate certification errors daily to the servicer and the servicer must promptly address and resolve certification errors before Fannie Mae will fund the HSA loan. Servicers should refer to eFannieMae.com for detailed certification procedures, including information about the HSA certification error reports.

One business day following verification of successful certification without any errors, Fannie Mae will remit the HSA amount to the servicer of the first-lien mortgage loan by electronically depositing the funds in the funding account the servicer has established specifically for HSA loan funding. (Servicers must not use an MBS custodial account for receipt of HSA funds.) Prior to submitting any HSA Note to Fannie Mae, the

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servicer must submit new wiring instructions using the *Lender's Designation/Deletion of Payee Information* ([Form 482](#)) via email to cash_processing@fanniemae.com for all nine-digit seller/servicer numbers that will be closing HSA loans.

**Section 609.10
Servicer's Receipt of
Funds (06/16/08)**

The servicer, upon receipt of the advance, must ensure that the first-lien mortgage loan is brought current (fully reinstated) by applying the HSA funds first to the delinquent PITI payments and then to foreclosure-related fees and costs, if applicable. Once the servicer has credited the borrower's account with the proceeds of the HSA, the servicer will then follow the applicable cash flow process.

If the monthly remittance type is...	Then the servicer must...
Scheduled/scheduled for a portfolio or MBS mortgage loan serviced under the special servicing option	Use the HSA proceeds to reimburse itself for delinquency advances or servicing advances (or reimburse the P&I custodial account for advances made from collections on hand that represented funds not yet due for remittance to Fannie Mae) made on the individual mortgage loan.
Actual/actual for a portfolio mortgage loan or a Pooled from Portfolio mortgage loan	Use the HSA proceeds to remit the P&I payments to Fannie Mae in the servicer's next scheduled remittance and then reimburse itself for any servicing advances not previously reimbursed by Fannie Mae.
Scheduled/actual	Use the HSA proceeds to reimburse itself for delinquency advances or servicing advances (or reimburse the P&I custodial account if the scheduled interest advances were made from collections on hand that represented funds not yet due for remittance to Fannie Mae) made on the individual mortgage loan.

**Section 609.11
Additional Servicer
Responsibilities
(06/16/08)**

The servicer must have the ability to identify whether a borrower on a first-lien mortgage loan currently has an HSA, allowing the HSA to be referenced in any payoff statement for the first-lien mortgage loan. In the event of a sale or transfer, this reference must remind the borrower that the HSA note is due and payable in full. This reference must clearly state that payoff of the HSA note is not required to release the first-lien mortgage loan. In the event of a refinance, this reference must clearly remind the borrower that the HSA note must continue to be paid. Lastly, the servicer must be able to promptly redirect any HSA note payments received to the

third-party servicer (or other party designated by Fannie Mae). An example of such a reminder to be included with the payoff statement is as follows:

NOTE: Our records indicate that you have a HomeSaver Advance note, which must be paid in full if you sell your property. Please contact your HomeSaver Advance note servicer for payoff information with respect to that loan. Payoff of the HomeSaver Advance note is not required to release the first-lien mortgage loan related to this payoff statement.

The servicer represents, warrants, and agrees that all right, title, and interest in the HSA note is sold, transferred, set over, and otherwise conveyed by the servicer to Fannie Mae as of the date of Fannie Mae's funding of the HSA note. The servicer further represents and warrants that there is no agreement with any other party for servicing of the HSA note.

**Section 609.12
Third-Party Servicer of
HSA Notes (06/05/09)**

Servicers are reminded that, for regular servicing option MBS mortgage loans, the servicer of the first-lien mortgage loan must arrange for the servicing of the HSA note. Fannie Mae has engaged third-party servicers to service the HSA notes related to first-lien mortgage loans in which Fannie Mae bears the risk of loss. Servicers of the first-lien mortgage loan must provide the borrower with appropriate written notification relative to the transfer of the HSA note to the appropriate third-party servicer, and the requirement for the borrower to make the HSA payments directly to the third-party servicer. A list of third-party servicers and the effective date for their use is available on eFannieMae.com.

**Section 609.13
HSA Note Repurchase
and Cancellation Policies
(03/27/09)**

Fannie Mae will require repurchase of HSA notes by the originating servicer if any of the following occurs:

- Any HSA note errors identified during the certification process are not resolved by the servicer within 90 calendar days after the notification of such errors.
- Fannie Mae's HSA custodian designated third-party servicer has not received an HSA note (or a copy of the note with a Lost Note Affidavit in a form satisfactory to Fannie Mae) within 90 days after the notification of the missing HSA note.

- HSA proceeds were improperly applied to the first-lien mortgage loan and the servicer failed to initiate correction of the application within 60 days after the HSA was funded.
- The first-lien mortgage loan is determined to be a regular servicing option mortgage loan.
- More than one HSA has been funded for the same property or more than two HSAs have been funded for the same borrower (for separate properties) to the same servicer.
- The HSA note was otherwise originated improperly (for example, the HSA note was entered into by an estate or an administrator of an estate without Fannie Mae's prior written approval, the wrong form of the HSA note was used, etc.).

Unless the servicer submits an appeal in writing, the servicer must remit repurchase funds as indicated on the repurchase letter within 30 days of the date of the repurchase letter or within a timeframe specified by Fannie Mae. Failure to comply with these repurchase requirements in a timely manner may result in Fannie Mae imposing sanctions or other remedies.

Servicers are reminded that the HSA foreclosure prevention alternative may only be utilized once during the term of a first-lien mortgage loan. Therefore, a first-lien mortgage loan for which the servicer repurchased the HSA note is not eligible for another HSA.

After repurchasing the HSA note, the HSA note will be returned to the originating servicer and the originating servicer will be responsible for collections under the note. The originating servicer may continue to leverage Fannie Mae's designated third-party servicer to perform collections activity; however, the originating servicer will be responsible for compensation of such services. Note: A repurchase transaction must not adversely affect the loan status of the first-lien mortgage; specifically, the servicer cannot reverse payments previously applied to the first-lien mortgage from the HSA proceeds.

Fannie Mae will automatically cancel an HSA case in the HSSN if a mortgage loan is submitted through the HSSN Workout Profiler, the case remains in a status of "In Review" or "Awaiting Review" for more than 30

days, and the information requested from the servicer has not been received by Fannie Mae. The servicer may subsequently resubmit the case.

Additionally, in cases where the servicer has submitted and closed an HSA case but has done so in error (for example, a properly executed note was never received by the servicer or Fannie Mae), Fannie Mae will cancel the HSSN case.

HSA Note Cancellation

Fannie Mae may cancel an HSA note for loans submitted in error or where the borrower's actions impact the viability of the HSA. Examples include, but are not limited to, the following:

- The borrower failed to comply with all terms and conditions of the HSA approval.
- The borrower paid off the first-lien mortgage loan or brought the first-lien mortgage loan current prior to the posting of the HSA proceeds.
- The borrower filed for bankruptcy prior to or on the date the HSA note was executed.
- The amount of the HSA was insufficient to bring the first-lien mortgage loan current.
- The borrower declined the HSA within one month of funding of the HSA.

A servicer must notify the Fannie Mae HSA designated third-party servicer as soon as it becomes aware that a case should be cancelled. In the event a servicer requests to cancel an HSA case more than 60 days after the funding date, Fannie Mae will review the HSA case and related circumstances and make a determination on whether cancellation should be granted or if repurchase of the HSA note is required.

When an HSA note is cancelled, the servicer must reverse the entire HSA loan proceeds applied to the first-lien mortgage loan, as well as payments made to the first-lien mortgage loan after the application of the HSA proceeds. The servicer then must reapply the payments made by the

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borrower after application of the HSA proceeds and make appropriate adjustments to the loan status.

Upon cancellation of the HSA note, Fannie Mae will draft the entire amount of the proceeds from the servicer's designated "All Fees for Cash Contracts and MBS Pools" account. First-lien mortgage loans that have had an HSA note cancelled may be eligible for a subsequent HSA provided that all of the eligibility criteria for an HSA are met.

**Section 610
Home Affordable
Modification Program
(04/21/09)**

Under the Treasury Department's (Treasury) Home Affordable Modification program (HAMP), servicers will use a uniform loan modification process to provide eligible borrowers with sustainable monthly payments. All servicers must participate in HAMP for all eligible mortgage loans held in Fannie Mae's portfolio or that are part of an MBS pool that has the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property.

The following words or terms are commonly used terms that relate to HAMP.

A	<i>Automated Valuation Model (AVM)</i> . Statistically based computer programs that use real estate information, such as comparable sales, property characteristics, tax assessments, and price trends, to provide an estimate of value for a specific property.
B	<i>Broker's Price Opinion (BPO)</i> . A written estimate of the probable sales price of a property performed by a real estate broker or sales person who may or may not have conducted an interior property inspection.
C	<i>Cash Reserves</i> . Liquid assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts).
E	<i>Escrow Shortage</i> . The amount by which the current escrow account balance falls short of the target balance at the time of the escrow analysis. This amount may not be capitalized. For HAMP purposes only, if the borrower is unable to contribute to the escrow shortage up front, the servicer must collect such funds from the borrower over a 60-month period.
F	<i>FHA HOPE for Homeowners</i> . The Federal Housing Administration's refinance program to help borrowers at risk of default and foreclosure to refinance into more affordable, sustainable mortgage loans. The HOPE for Homeowners program is effective from October 1, 2008 to September 30, 2011.
H	<i>HAMP</i> . Home Affordable Modification Program.
I	<i>Interest Rate Cap</i> . The Freddie Mac Weekly Primary Mortgage Market Survey [®] (PMMS [®]) Rate for 30-year fixed-rate conforming mortgage loans, rounded to the nearest 0.125 percent as of the date that the modification agreement is prepared. The Freddie Mac PMMS is available on FreddieMac.com .

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	<i>Interim Month.</i> The month in between the last day of the final trial period month and the modification effective date when the modification effective date is extended to the first day of the second month following the last day of the trial period. Also see <i>Trial Period Plan Cut-off Date</i> .
J	<p><i>Jumbo Conforming Mortgage Loans.</i> Jumbo conforming mortgage loans are conventional mortgage loans sold to Fannie Mae that were originated from July 1, 2007 through and including December 31, 2008, with original UPBs that exceed Fannie Mae's base conforming mortgage loan limits (\$417,000 for a one-unit property). The original UPB of a Jumbo conforming mortgage loan may not exceed the lesser of:</p> <ul style="list-style-type: none"> 125 percent of the "area median house price" (as determined at a county level) of a residence of applicable size, or 175 percent of the base conforming mortgage loan limit: \$729,750 for a one-unit property (except in Alaska, Hawaii, Guam, and the U.S. Virgin Islands, where the limit is higher). The Jumbo conforming mortgage loan limits were enacted as part of the Economic Stimulus Act of 2008.
L	<i>Loss of Good Standing.</i> Achieved when three monthly payments are due and unpaid on the last day of the third month. Once lost, good standing cannot be restored. The mortgage loan is no longer eligible to receive borrower and servicer incentives and all accrued but unpaid incentive payments will be forfeited.
M	<i>Mark-to-Market LTV (MTMLTV) Ratio.</i> The ratio between (i) the current UPB of the mortgage loan and (ii) the current value of the property that secures the mortgage loan.
	<i>Modification Effective Date.</i> The first day of the month following the successful completion of the trial period plan.
	<i>Monthly Mortgage Payment Ratio.</i> The amount of the monthly mortgage payment divided by the borrower's gross monthly income. For purposes of HAMP, the monthly mortgage payment includes the monthly payment of principal, interest, property taxes, hazard insurance, flood insurance, condominium fees, homeowners' association fees, and cooperative maintenance fees (as applicable) and any applicable escrow shortage payments subject to the 60-month repayment plan. The monthly mortgage payment does not include mortgage insurance premiums or payments due to subordinate-lien holders.
	<i>Modified Interest Bearing Balance.</i> The portion of the post-modification UPB excluding the principal forbearance amount.
N	<i>Net Present Value (NPV) Test.</i> A test using the NPV model and mortgage loan or borrower attributes (for example, MTMLTV, current monthly mortgage payment, current credit score, delinquency status) and various assumptions to determine the value of a modification as compared to no modification.
	<i>Non-Borrower Household Income.</i> Income from someone other than a borrower who resides in the property and whose income has been and can reasonably continue to be relied upon to support the mortgage payment.

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P	<i>Principal Forbearance.</i> For the purposes of HAMP, the portion of the principal balance that is required to be deferred to reach the Targeted Monthly Mortgage Payment Ratio. This amount of principal will result in a non-interest-bearing, non-amortizing balloon payment fully due and payable upon the earliest of the transfer of the property, pay-off of the interest-bearing UPB, or maturity of the mortgage loan.
T	<i>Target Monthly Mortgage Payment Ratio.</i> For purposes of HAMP, as close as possible but no less than 31 percent of the borrower's gross monthly income.
	<i>Trial Payment Period.</i> A three-month period prior to the modification effective date during which the borrower makes payments approximating an amount equal to the modified payment as a condition of the modification. If the borrower is facing imminent default, the trial period must be four months in length.
	<i>Trial Period Plan Cut-off Date.</i> The date by which a borrower's last trial period payment must be received for the modification to be effective the first day of the month following the last trial period month. The cut-off date must be after the due date of the final trial period payment. A servicer must treat all borrowers the same when applying the Trial Period Plan Cut-off Date as evidenced by a written policy.
	<i>Trial Period Plan Effective Date.</i> The effective date of the trial period plan. If the servicer completes and transmits the trial period plan to the borrower on or before the 15th day of a calendar month, then the servicer should insert the first day of the next month as the Trial Period Plan Effective Date. If the servicer completes and transmits the trial period plan to the borrower after the 15th day of a calendar month, the servicer should use the first day of the second month as the Trial Period Plan Effective Date.
	<i>Trial Period Offer Deadline.</i> The last day of the month in which the Trial Period Plan Effective Date occurs. The servicer must receive the borrower's first trial period payment on or before this date.

**Section 610.01HAMP
Eligibility (06/01/10)**

A mortgage loan is eligible for HAMP if it is a Fannie Mae portfolio mortgage loan or MBS mortgage loan guaranteed by Fannie Mae and all of the following criteria are met:

- The mortgage loan is a first-lien conventional mortgage loan originated on or before January 1, 2009. Jumbo-conforming mortgage loans are eligible.
- The mortgage loan has not been previously modified under HAMP.
- The mortgage loan is delinquent or default is reasonably foreseeable; mortgage loans currently in foreclosure are eligible.

- The mortgage loan is secured by a one- to four-unit property, one unit of which is the borrower's principal residence. Cooperative share mortgages and mortgage loans secured by condominium units are eligible for HAMP. Mortgage loans secured by manufactured housing units are eligible for HAMP.
- The property securing the mortgage loan must not be vacant or condemned.
- The borrower documents a financial hardship and represents that he or she does not have sufficient liquid assets to make the monthly mortgage payments by completing a [Request for Modification and Affidavit \(RMA\)](#) and providing the required income documentation. The documentation supporting income may not be more than 90 days old (as of the date that such documentation is received by the servicer in connection with evaluating a mortgage loan for HAMP).
- The borrower currently has a monthly mortgage payment ratio greater than 31 percent.
- A borrower in active litigation regarding the mortgage loan is eligible for HAMP.
- The servicer may not require a borrower to waive legal rights as a condition of HAMP.
- A borrower actively involved in a bankruptcy proceeding is eligible for HAMP at the servicer's discretion. Borrowers who have received a Chapter 7 bankruptcy discharge in a case involving the first-lien mortgage loan who did not reaffirm the mortgage debt under applicable law are eligible, provided the [Home Affordable Modification Trial Period Plan Notice](#) and *Home Affordable Modification Agreement (Form 3157)* are revised as outlined in *Section 610.04.06, Executing the HAMP Documents (06/01/10)* under "Acceptable Revisions to HAMP Documents."
- The borrower agrees to set up an escrow account for taxes, hazard insurance, and flood insurance prior to the beginning of the trial period if one does not currently exist.

- Mortgage loans subject to full lender recourse, including MBS mortgage loans and portfolio mortgage loans, are ineligible for the Fannie Mae HAMP. However, servicers should consider these mortgage loans for the non-Government Sponsored Enterprise (GSE) HAMP.
- Borrowers may be accepted into the program if the [Home Affordable Modification Trial Period Plan Notice](#) is issued to the borrower on or before December 31, 2012.

FHA mortgage loans that are held in Fannie Mae's portfolio or that are part of an MBS pool that has the special servicing option or a shared risk MBS pool for which Fannie Mae markets the acquired property are eligible for the FHA-HAMP as outlined in FHA Mortgagee Letter 2009-23. Mortgage loans guaranteed or held by other federal government agencies (i.e., VA and RD) may also be eligible for HAMP in the future and will be subject to guidance issued by the applicable government agency.

A servicer must consider for modification under HAMP all first-lien home equity loans and lines of credit that meet the basic HAMP eligibility criteria so long as:

- the servicer has the capability within its servicing system to clearly identify the mortgage loan as a first lien, and
- the servicer has the ability to establish an escrow for the mortgage loan.

Servicers whose systems do not provide the required functionality are strongly encouraged to complete system enhancements that will allow modification of first-lien home equity loans and lines of credit. In the event a servicer utilizes a separate servicing system for first-lien mortgage loans other than equity loans and lines of credit and would convert the home equity loan or line of credit to the first-lien mortgage system in order to establish an escrow account, the servicer may wait until the borrower successfully completes the trial period plan before establishing an escrow account. However, the trial period payment must still equal the target monthly mortgage payment ratio.

Any HAMP modification of a first-lien HELOC must result in a modified mortgage loan that is a fixed-rate, fully amortizing mortgage loan that does not permit the borrower to draw any further amounts from the line of credit. Accordingly, servicers should insert the following language as section 4[O] of the *Home Affordable Modification Agreement* ([Form 3157](#)):

If my Loan Documents govern a home equity loan or line of credit, then I agree that as of the Modification Effective Date, I am terminating my right to borrow new funds under my home equity loan or line of credit. This means that I cannot obtain additional advances, and must make payments according to this Agreement. (Lender may have previously terminated or suspended my right to obtain additional advances under my home equity loan or line of credit, and if so, I confirm and acknowledge that no additional advances may be obtained.)

A borrower is ineligible for a subsequent HAMP offer if:

- the borrower previously received a HAMP modification and lost good standing; or
- the borrower is considered to have failed the trial period plan because a trial period payment was not received by the servicer by the last day of the month in which it was due.

A borrower who has been evaluated for HAMP but does not meet the minimum eligibility criteria described in this *Servicing Guide*, or who meets the minimum eligibility criteria but is not qualified for HAMP by virtue of:

- a negative net present value (NPV) result where the value for the “no modification” scenario exceeds the value for the “modification” scenario by more than \$5,000;
- excessive forbearance; or
- other financial reason;

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may request reconsideration for HAMP at a future time if he or she experiences a change in circumstance.

Section 610.02
HAMP Documents
(06/01/10)

The HAMP documents are available on eFannieMae.com. Documents include the following:

- [*Solicitation Letter*](#);
- *Making Home Affordable Program Hardship Affidavit* ([Form 1021](#));
- [*Request for Modification and Affidavit \(RMA\)*](#). Servicers may use other proprietary financial information forms that are substantially similar in content to the [RMA](#). When the [RMA](#) is not used, servicers must obtain an executed [Form 1021](#). Servicers may also incorporate all of the information on this standalone affidavit into their own form;
- [*Home Affordable Modification Trial Period Plan Notice*](#);
- [*Home Affordable Modification Documentation Request Letter*](#);
- IRS Form 4506-T (Request for Transcript of Tax Return) or IRS Form 4506T-EZ (Short Form Request for Individual Tax Return Transcript);
- [*Home Affordable Modification Agreement Cover Letter*](#);
- Home Affordable Modification Agreement (Form 3157, hereinafter referred to as the “Agreement”); and
- [*Home Affordable Modification Program Counseling Letter*](#).

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**Section 610.03
Underwriting (04/21/09)****Section 610.03.01
Determining Hardship
(04/21/09)**

Every borrower and co-borrower (if applicable) seeking a modification, whether in default or not, must sign an [RMA](#) that attests to and describes one or more of the following types of hardship:

- A reduction in or loss of income that was supporting the mortgage loan; for example, unemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings.
- A change in household financial circumstances; for example, death in family, serious or chronic illness, permanent or short-term disability, or increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members).
- A recent or upcoming increase in the monthly mortgage payment.
- An increase in other expenses; for example, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, or increased real property taxes.
- A lack of sufficient cash reserves to maintain payment on the mortgage loan and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts and assets that serve as an emergency fund – generally equal to three times the borrower's monthly debt payments).
- Excessive monthly debt payments and overextension with creditors; for example, the borrower was required to use credit cards, a home equity loan, or other credit to make the mortgage payment.

A borrower may provide evidence of hardship for reasons other than those explicitly listed above. A servicer who believes that Fannie Mae should consider a borrower for HAMP for reasons not listed above must request prior written approval from Fannie Mae on a case-by-case basis. To request Fannie Mae approval, servicers must contact Fannie Mae at

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1-888-FANNIE5 (1-888-326-6435) or by email to
servicing_solutions@fanniemae.com.

Section 610.03.02
Government Monitoring
Data (04/21/09)

The Department of Housing and Urban Development (HUD) has directed Fannie Mae, pursuant to HUD's authority under Section 1325(2) of the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA), 24 C.F.R. 81.44(a) and (b), 12 C.F.R. 202.5(a)(2), and its general regulatory authority under the Fair Housing Act, 42 U.S.C. 3601 et seq. (the Act) to require servicers to request and report data on the race, ethnicity, and sex of borrowers involved in potential loan modifications under HAMP ("Government Monitoring Data") in order to monitor compliance with the Act and other applicable fair lending and consumer protection laws. This section of the *Servicing Guide* is incorporated into the Mortgage Selling and Servicing Contract (MSSC) between Fannie Mae and its servicers and constitutes an agreement entered into between Fannie Mae, on behalf of HUD, and Fannie Mae's approved servicers. As such, this is an agreement entered into by Fannie Mae's approved servicers with an enforcement agency (i.e., HUD) to permit the enforcement agency to monitor or enforce compliance with federal law, within the meaning of 12 C.F.R. 202.5(a)(2).

HUD has specified that the Government Monitoring Data shall be collected in the [RMA](#). Servicers must request, but not require, that each borrower who completes an [RMA](#) in connection with HAMP furnish the Government Monitoring Data. If any borrower chooses not to provide the Government Monitoring Data, or any part of it, the servicer must note that fact on the [RMA](#) in the space provided. In such circumstances, and if the [RMA](#) is completed in a face-to-face setting, the servicer, its representative, or agent shall then also note on the form, to the extent possible on the basis of visual observation or surname, the race, ethnicity, and sex of any borrower or co-borrower who has not furnished the Government Monitoring Data. If any borrower declines or fails to provide the Government Monitoring Data on an [RMA](#) taken by mail or telephone or on the Internet, the data need not be provided. In such a case, the servicer must indicate that the [RMA](#) was received by mail, telephone, or Internet, if it is not otherwise evident on the face of the [RMA](#).

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**Section 610.03.03
Reasonably Foreseeable
(Imminent) Default
(06/01/10)**

Servicers are prohibited from soliciting borrowers who are current or less than 30 days delinquent for participation in HAMP. However, if such a borrower contacts the servicer, the servicer may consider HAMP as a viable foreclosure prevention alternative. The servicer must make a determination that the borrower is facing imminent default prior to sending a firm offer to such a borrower.

A borrower who is current, contacts the servicer for a modification, appears potentially eligible for a modification, and has suffered an eligible hardship (as described in *Section 610.03.01, Determining Hardship (04/21/09)*) must be evaluated using Freddie Mac's Imminent Default Indicator™ (IDI), a statistical model that predicts the likelihood of default or serious delinquency. IDI must also be used to evaluate such borrowers who are in default but less than 60 days delinquent.

For borrowers who must be evaluated using IDI, the servicer must evaluate the borrower's financial condition in light of the borrower's hardship, as well as the condition of and circumstances affecting the property securing the mortgage loan. The servicer must verify all financial documentation (income *and* asset) for all borrowers of mortgage loans that are either current or less than 60 days delinquent prior to offering a trial period plan.

Servicers must obtain a completed [RMA](#) from the borrower(s) to evaluate the borrower's financial condition in determining whether the borrower is facing imminent default, and must also obtain a current credit report for the borrower(s) to validate and supplement the borrower's information. The servicer should request such other documents from borrower(s) as deemed necessary to evaluate the borrower's financial condition.

A borrower is not considered in imminent default if the borrower has cash reserves equal to or exceeding \$25,000. If the borrower's cash reserves are less than \$25,000, the loan must be submitted through the IDI. If the IDI result is a "1," the mortgage loan is categorized as "at risk of imminent default," and may be considered in imminent default. However, if the borrower's cash reserves are less than \$25,000 and the IDI result is a "2," the mortgage loan is NOT categorized as "at risk of imminent default." The servicer may further evaluate a borrower for HAMP if the borrower can demonstrate that he or she is experiencing an acceptable hardship. Acceptable hardships include death, divorce, or legal separation of a

borrower/co-borrower, or long-term or permanent illness or disability of a borrower/co-borrower or dependent family member. The servicer must obtain copies of documentation of an acceptable hardship as outlined below.

Death of a borrower/co-borrower:

- death certificate, or
- obituary or newspaper article reporting the death, and
- income documentation prior to the event compared to income documentation of the remaining borrower after the event.

Long-term or permanent illness or disability of a borrower/co-borrower or persons other than the borrower/co-borrower who is claimed as a dependent for federal income tax purposes:

- medical bills,
- doctor's certificate of illness or disability,
- proof of monthly insurance benefits or government assistance (if applicable), or
- federal income tax return showing medical deductions above the minimum for itemized deductions.

Divorce or legally documented separation of borrower/co-borrower:

- divorce decree signed by the court;
- current credit report evidencing recorded divorce decree;
- separation agreement signed by the court if the separation is legally documented by the court;
- current credit report evidencing recorded separation agreement; or

- in cases where the borrowers are unmarried, a recorded quitclaim deed indicating that either borrower relinquishes all rights to the property securing the mortgage loan; or
- income or expense documentation prior to the event compared to the income or expense documentation of the remaining borrower after the event.

Servicers will launch the File Transfer Portal link either through eFannieMae.com or HSSN and log in using its HSSN user ID and password. A servicer is required to create a Microsoft® Excel® spreadsheet that includes all of the data elements required for an imminent default determination and upload the input file in a Comma Separated Variable (CSV or .csv) format. Only mortgage loans owned or securitized by Fannie Mae are permitted in the input file. A sample Excel spreadsheet—the IDI Data Submission File—is available on eFannieMae.com. It outlines the required data elements, specifies the order in which the data elements must be presented, and provides instructions for creating and submitting the CSV input file.

The following information is provided about three of the data elements in the input file:

Credit Score — If the servicer obtains multiple credit scores for a single borrower, the servicer must select a representative credit score using the lower of two or the middle of three credit scores. If there are multiple borrowers, the servicer must determine the representative score for each borrower and enter the lowest representative score as the credit score for the mortgage loan.

Monthly debt payment-to-income ratio — For the purposes of the imminent default evaluation, a servicer may not include unemployment income in the calculation of the borrower's monthly gross income when calculating the total monthly debt payment-to-income ratio.

Property Value — The servicer must provide the property value used for the initial Net Present Value (NPV) test, which must be less than 90 days old on the date the servicer performs the initial NPV test. Therefore, the servicer must ensure that the property value used during any initial evaluation does not subsequently become more than 90 days old by the

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time the servicer inputs the property value into the NPV model. Servicers are not required to update the property valuation during the remainder of the trial period for any subsequent NPV evaluation.

The CSV input file will be evaluated by the IDI model and an email notification will be sent to the servicer when the IDI results are available. The time it takes to return the results will depend on the size of the file; however, it is anticipated that results will be returned within a few hours. Once available, the servicer will log into the File Transfer Portal to retrieve the output file. The output file provided to the servicer will be returned in the CSV format. Only results obtained from the IDI in HSSN will be acceptable to make an imminent default determination for Fannie Mae–owned or securitized mortgage loans.

A servicer must document in its servicing system the basis for its determination that the borrower is facing imminent default. The servicer's determination must include identification of the borrower's hardship, which will generally be identified in the [RMA](#), and the anticipated or actual timing of the default. The servicer's documentation must also include the information regarding the borrower's financial condition utilized in determining that the borrower is facing imminent default as required above, as well as the condition and circumstances of the property securing the mortgage loan. The servicer must report the reason(s) for the anticipated or actual delinquency along with the delinquency status code 09 – Forbearance, during the trial payment period.

Section 610.03.04
Net Present Value (NPV)
Test (11/02/09)

All mortgage loans that meet the HAMP eligibility criteria must be evaluated using a standard NPV test for reporting purposes. The servicer must maintain detailed documentation of the NPV model and version used, all NPV inputs and assumptions, and the NPV results. If the value for the no-modification scenario exceeds the value for the modification scenario by more than \$5,000, the servicer must not perform the modification without the express written consent of Fannie Mae. For example, if the no-modification scenario produces a value of \$10,000 and the modification scenario produces a value of \$4,000, the servicer must not perform the modification.

The NPV model is available on the Home Affordable Modification servicer web portal accessible through [HMPAdmin.com](#). On this portal, servicers will have access to the NPV model as well as the NPV User

Guide, providing detailed guidelines for submitting proposed modification data.

A servicer having at least a \$40 billion servicing book will have the option to create a customized NPV model that uses a set of default rates and redefault rates estimated based on the experience of its own portfolios, taking into consideration, if feasible, current LTV, current monthly mortgage payment, current credit score, delinquency status, and other loan or borrower attributes. Detailed guidance on required inputs for a customized NPV model is available on HMPadmin.com.

To obtain a property valuation input for the NPV model, servicers may use either an automated valuation model (AVM), provided that the AVM renders a reliable confidence score, a broker price opinion (BPO), or an appraisal. Servicers may use an AVM provided by Fannie Mae or Freddie Mac. As an alternative, servicers may rely on their own internal AVM provided that:

- the servicer is subject to supervision by a Federal regulatory agency,
- the servicer's primary Federal regulatory agency has reviewed the model, and
- the AVM renders a reliable confidence score.

If a Fannie Mae or Freddie Mac AVM or the servicer AVM is unable to render a value with a reliable confidence score, the servicer must obtain an assessment of the property value utilizing a BPO or a property valuation method acceptable to the servicers' Federal regulatory supervisor. Such assessment must be rendered in accordance with the [Interagency Appraisal and Evaluation Guidelines](#) (as if such guidelines apply to loan modifications). In all cases, the property valuation used cannot be more than 90 days old as of the date that the servicer first evaluated the borrower for a HAMP trial period plan using the NPV model. The property valuation will remain valid for the duration and does not need to be updated for any subsequent NPV evaluation as outlined in *Chapter 6, Exhibit 1*.

The servicer should obtain the results of the NPV model at the time of the HAMP eligibility determination.

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From time to time, the NPV base model will be updated and a new version of the NPV base model will be made available. Servicers will be allowed a grace period to implement each new version of the NPV base model. The grace period for each new version will be set forth in the applicable NPV release documentation. In addition, the release documentation will provide guidance as to which NPV model version servicers should use during the grace period. After the grace period, servicers must use either the most recent version of the base model or a customized version that meets the requirements for customization outlined in the model documentation.

In the event that a mortgage loan must be run through the NPV model more than once, a servicer should test the mortgage loan using the same major NPV model version each time the borrower is evaluated. All versions of the NPV model are available on HMPAdmin.com. *Exhibit 1: NPV Versioning Requirements* outlines NPV versioning requirements and NPV input requirements for retesting.

Section 610.03.05
Verifying Borrower
Income and Occupancy
Status (06/01/10)

A servicer may evaluate a borrower for HAMP only after the servicer receives the financial documentation (referred to as the “Initial Package”) from the borrower (the term “borrower” includes any co-borrower(s)). The Initial Package includes:

- A signed and completed [RMA](#).
- A signed and completed Internal Revenue Service Request for Transcript of Tax Return (Form 4506-T) or Short Form Request for Individual Tax Return Transcript (Form 4506T-EZ).
- Evidence of income as described in *Documenting Gross Monthly Income* later in this section.

Within 10 business days following receipt of an Initial Package, the servicer must acknowledge, in writing, the borrower’s request for HAMP participation by sending the borrower confirmation that the Initial Package was received and a description of the servicer’s evaluation process and timeline. If the Initial Package is received from the borrower via e-mail, the servicer may e-mail the acknowledgment. The servicer must maintain evidence of the date of receipt of the borrower’s Initial Package in its records.

Within 30 calendar days from the date an Initial Package is received, the servicer must review the documentation provided by the borrower for completeness. If the documentation is incomplete, the servicer must send the borrower an Incomplete Information Notice in accordance with the guidance set forth in *Section 610.04.02, Borrower Notices (06/01/10)*. If the borrower's documentation is complete, the servicer must either:

- send the borrower a [*Trial Period Plan Notice*](#); or
- make a determination that the borrower is not eligible for HAMP and communicate this determination to the borrower in accordance with *Section 610.04.02, Borrower Notices (06/01/10)*.

A borrower is eligible for HAMP if the financial documentation confirms that the monthly mortgage payment ratio prior to the modification is greater than 31 percent. For purposes of HAMP, "monthly mortgage payment ratio" is the ratio of the borrower's current monthly mortgage payment to the borrower's monthly gross income (or the borrowers' combined monthly gross income in the case of co-borrowers).

The monthly mortgage payment includes the monthly payment of principal, interest, property taxes, hazard insurance, flood insurance, condominium association fees, and homeowners' association fees, as applicable (including any escrow payment shortage amounts subject to the 60-month repayment plan). When determining a borrower's monthly mortgage payment ratio, servicers must adjust the borrower's current mortgage payment to include, as applicable, property taxes, hazard insurance, flood insurance, condominium association fees, and homeowners' association fees if these expenses are not already included in the borrower's payment. The monthly mortgage payment must not include mortgage insurance premium payments or payments due to holders of subordinate liens. If a borrower has indicated that there are association fees, but has not been able to provide written documentation to verify the fees, the servicer may rely on the information provided by the borrower if the servicer has made reasonable efforts to obtain the association fee information in writing.

Determining Gross Monthly Income

The borrower's "monthly gross income" is the borrower's income amount before any payroll deductions and includes wages and salaries, overtime pay, commissions, fees, tips, bonuses, housing allowances, other compensation for personal services, Social Security payments, including Social Security received by adults on behalf of minors or by minors intended for their own support, and monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment benefits, rental income, and other income such as adoption assistance. For the purposes of determining monthly gross income when non-taxable income is used to qualify for HAMP, and the income and its tax-exempt status are likely to continue, the servicer may develop an "adjusted gross income" for the borrower by adding an amount equivalent to 25 percent of the nontaxable income to the borrower's income.

If the actual amount of federal and state taxes that would generally be paid by a wage earner in a similar tax bracket is more than 25 percent of the borrower's nontaxable income, the servicer may use that amount to develop the adjusted gross income.

Servicers should include non-borrower household member income in monthly gross income if it is voluntarily provided by the borrower and if there is documentary evidence that the income has been, and can reasonably continue to be, relied upon to support the mortgage payment. All non-borrower household income included in monthly gross income must be documented and verified by the servicer using the same standards for verifying a borrower's income. (An example of non-borrower income is boarder income.) A servicer should not consider expenses of non-borrower household members but may consider the portion of his or her income that the non-borrower household member routinely contributes to the household as part of the monthly gross income calculation.

Documenting Gross Monthly Income

All parties whose income was used to qualify for the original mortgage note must submit income documentation, which must not be more than 90 days old as of the date that such documentation is received by the servicer in connection with evaluating a mortgage loan for HAMP. There is no

requirement to refresh such documentation during the remainder of the trial period from the date HAMP eligibility is determined.

All borrowers may elect to provide signed federal income tax returns but are not required to do so. Every borrower must provide a signed and completed IRS Form 4506-T (Request for Transcript of Tax Returns) or IRS Form 4506T-EZ (Short Form Request for Individual Tax Return Transcript) that will allow the servicer (directly or through an authorized designee) to obtain the borrower's most recent federal income tax transcript from the Internal Revenue Service. A servicer must submit the Form 4506-T or IRS Form 4506T-EZ to the IRS for processing unless the borrower provides a signed copy of his or her most recent federal income tax return, including all schedules and forms. Form 4506T-EZ is a permissible substitute for Form 4506-T only for borrowers who filed a Form 1040 series tax return on a calendar year basis. All other borrowers must provide Form 4506-T. However, for borrowers facing imminent default, the servicer is required to obtain a signed federal income tax return in all cases.

A borrower is required only to submit his or her most recent federal income tax return. If a tax return or transcript is not available for the most recent tax year, the servicer may accept a signed tax return, electronically filed tax return, or transcripts for a prior tax year but must process the borrower's signed Form 4506-T with the IRS to confirm that the borrower did not file a current tax return. If a borrower is not required to file a tax return, the borrower must document why he or she was not required to file a tax return.

The servicer should review the tax return information for all borrowers to help verify income and identify discrepancies. If the tax information identifies income relevant to the HAMP decision that the borrower did not disclose on the [RMA](#), the servicer must obtain other documentation to reconcile the inconsistency. In resolving inconsistencies, servicers must use reasonable business judgment to determine whether such income is no longer being earned or has been reduced to the amounts disclosed on an [RMA](#). The servicer should ask the homeowner to explain material differences between the federal income tax returns/transcript and the [RMA](#), and document such differences in the servicing system. A servicer should not modify a mortgage loan if there is reasonable evidence indicating the borrower submitted income information that is false or

misleading or if the borrower otherwise engaged in fraud in connection with the modification.

The borrower (the term “borrower” includes any co-borrower) must provide certain financial information to the servicer as outlined below.

If the borrower is employed:

- A signed copy of the most recent federal income tax return.
- Copies of the two most recent paystubs, not more than 90 days old as of the date of submission, indicating year-to-date earnings.
 - Servicers may accept pay stubs that are not consecutive if, in the business judgment of the servicer, it is evident that the borrower's income has been accurately established.
 - When two pay stubs indicate different periodic income, servicers may use year-to-date earnings to determine the average periodic income, and account for any non-periodic income reflected in either of the pay stubs.
 - When verifying annualized income based on the year-to-date earnings reflected on pay stubs, servicers may, in their business judgment, make adjustments when it is likely that sources of additional income (bonus, commissions, etc.) are not likely to continue.

If the borrower is self-employed:

- The most recent quarterly or year-to-date profit and loss statement for each self-employed borrower. Audited financial statements are not required.

Borrowers are not required to use alimony, separation maintenance, or child support income to qualify for HAMP. If the borrower elects to use alimony or child support income to qualify, acceptable documentation includes:

- Photocopies of the divorce decree, separation agreement, or other type of legal written agreement or court decree that provides for the payment of alimony or child support and states the amount of the award and the period of time over which it will be received.
- Documents supplying reasonably reliable evidence of full, regular, and timely payments, such as copies of deposit slips, or the two most recent bank statements showing deposit amounts.
- If the borrower voluntarily provides such income, and that income renders the borrower ineligible for a HAMP offer, the servicer is allowed to remove that income from consideration and re-evaluate the borrower for HAMP eligibility.

If the borrower has other income, such as Social Security, disability or death benefits, public assistance, adoption assistance, or a pension:

- Evidence of (i) the amount and frequency of the benefits, such as letters, exhibits, a disability policy, or benefits statement from the provider, and (ii) receipt of payment, such as copies of the two most recent bank statements or deposit advices showing deposit amounts. If a benefits statement is not available, servicers may rely only on receipt of payment evidence, if it is clear that the borrower's entitlement is ongoing.

If the borrower collects unemployment:

- Evidence of the amount, frequency, and duration of the benefits (usually obtained through a monetary determination letter). The unemployment income must continue for at least nine months from the date of the application. The duration of benefit eligibility—including federal and state extensions—may be evidenced by a screenshot or printout from the Department of Labor Unemployment Insurance benefit tool.

Passive and non-wage income, including rental income, part-time employment, bonuses, tips, and investment and benefit income, that constitutes less than 20 percent of the borrower's total gross income does not have to be documented. With the exception of borrowers facing imminent default, servicers may use undocumented income if declared by

the borrower to qualify for HAMP. For a borrower facing imminent default, passive and non-wage income that exceeds \$100 per month must be documented prior to being deemed eligible for the trial period; however, all passive and non-wage income must be verified based on documentation prior to final modification.

Rental income is generally documented through the Schedule E – Supplemental Income and Loss, for the most recent tax year.

- When Schedule E is not available to document rental income because the property was not previously rented, servicers may accept a current lease agreement and bank statements or cancelled rent checks.
- If the borrower is using income from the rental of a portion of the borrower's principal residence, the income may be calculated at 75 percent of the monthly gross rental income, with the remaining 25 percent considered vacancy loss and maintenance expense.
- If the borrower is using rental income from properties other than the borrower's principal residence, the income to be calculated for HAMP purposes should be 75 percent of the monthly gross rental income, reduced by the monthly debt service on the property (i.e., principal, interest, taxes, insurance, including mortgage insurance, and association fees), if applicable.

For other earned income (for example, bonus, commission, fee, housing allowance, tips, and overtime):

- Reliable third-party documentation describing the nature of the income (for example, an employment contract or printouts documenting tip income).

Verifying Occupancy

A servicer may solely rely on the address indicated on the credit report to verify occupancy so long as the credit report lists the property address as the borrower's current residence. If the credit report does not indicate the property address as the borrower's current residence, the servicer must perform additional due diligence prior to extending a HAMP offer which

must be documented in the loan file/servicing system for compliance review purposes.

**Section 610.03.06
Standard Modification
Waterfall (11/02/09)**

Servicers must apply the proposed modification steps enumerated below in the stated order of succession until the borrower's monthly mortgage payment ratio is reduced as close as possible to 31 percent, without going below 31 percent (the "target monthly mortgage payment ratio").

Servicers must request prior written approval from Fannie Mae to deviate from the modification steps enumerated below or to reduce the borrower's monthly mortgage payment ratio below 31 percent. Prior written approval may be requested by submitting a non-delegated case into the HSSN. If approval is granted, borrower and servicer incentive payments for these modifications will be paid based on modification terms that reflect the target monthly mortgage payment ratio of 31 percent.

In the event that a modification step (for example, principal forbearance) is prohibited under applicable state law, a servicer may skip the modification step without obtaining Fannie Mae's prior written approval.

Note: If a borrower has an ARM loan or interest-only mortgage loan, the existing interest rate will convert to a fixed interest rate, fully amortizing mortgage loan.

Step 1: Capitalize accrued interest, out-of-pocket escrow advances to third parties, and any required escrow advances that will be paid to third parties by the servicer during the trial period and servicing advances paid to third parties in the ordinary course of business and not retained by the servicer, if allowed by state law. Late fees may not be capitalized and must be waived if the borrower satisfies all conditions of the trial period plan. If applicable state law prohibits capitalization of past-due interest or any other amount, the servicer must collect such funds from the borrower over a 60-month repayment period unless the borrower decides to pay the amount upfront.

Step 2: Reduce the interest rate. If the loan is a fixed-rate mortgage loan or an ARM loan, then the starting interest rate is the current interest rate (the note rate).

Reduce the starting interest rate in increments of 0.125 percent to get as close as possible to the target monthly mortgage payment ratio. The interest rate floor in all cases is 2 percent.

- If the resulting rate is below the Interest Rate Cap, this reduced rate will be in effect for the first five years followed by annual increases of 1 percent per year (or such lesser amount as may be needed) until the interest rate reaches the Interest Rate Cap, at which time it will be fixed for the remaining mortgage loan term.
- If the resulting rate exceeds the Interest Rate Cap, then that rate is the permanent rate.

The Interest Rate Cap is the Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate for 30-year fixed-rate conforming mortgage loans, rounded to the nearest 0.125 percent, as of the date that the Agreement is prepared.

Step 3: If necessary, extend the term and reamortize the mortgage loan by up to 480 months from the modification effective date (that is, the first day of the month following the end of the trial period) to achieve the target monthly mortgage payment ratio. Negative amortization after the effective date of the modification is prohibited.

Step 4: If necessary, the servicer must provide for principal forbearance to achieve the target monthly mortgage payment ratio. The principal forbearance amount is non-interest-bearing and non-amortizing. The amount of principal forbearance will result in a balloon payment fully due and payable upon the earliest of the borrower's transfer of the property, payoff of the interest-bearing UPB, or maturity of the mortgage loan. A principal write-down or principal forgiveness is prohibited on Fannie Mae mortgage loans.

For mortgage loans eligible for HAMP and deemed NPV positive, servicers are not required to forbear more than the greater of:

- 30 percent of the UPB of the mortgage loan, or

- an amount resulting in a modified interest-bearing balance that would create a current mark-to-market loan-to-value ratio of less than 100 percent.

If the borrower's monthly mortgage payment cannot be reduced to the target monthly mortgage payment ratio of 31 percent unless the servicer forbears more than the amounts described above, the servicer may not perform the modification without the express written consent of Fannie Mae.

If the mortgage loan is deemed "NPV negative," where the value for the no-modification scenario exceeds the value for the modification scenario by more than \$5,000, the servicer may not perform the modification without the express written consent of Fannie Mae. The servicer will need to compute the difference between the modification and no-modification scenarios in order to determine whether the \$5,000 threshold has been exceeded.

Treatment of Option ARM Loans

Servicers are reminded that if a borrower has an ARM or interest-only mortgage loan, the interest rate will convert to a fixed-interest-rate, fully amortizing mortgage loan. For Fannie Mae ARM loans that provide for a monthly payment option (for example, specified minimum payment, interest-only payment, 30-year fully amortizing payment, or 15-year fully amortizing payment), the payment used to calculate the 31 percent monthly mortgage payment ratio should be the current payment legally due at the time the servicer determines eligibility regardless of imminent changes in the rate or amount of payment. This payment option must be used in the standard modification waterfall to reduce the borrower's monthly mortgage payment ratio as close as possible to, without going below, 31 percent.

Section 610.03.07
Verifying Monthly Gross
Expenses (04/21/09)

A servicer must obtain a credit report for each borrower or a joint report for a married couple who are co-borrowers to validate installment debt and other liens. In addition, a servicer must consider information concerning

monthly obligations obtained from the borrower either verbally or in writing. The “monthly gross expenses” equal the sum of the following monthly charges:

- The monthly mortgage payment, including any mortgage insurance premiums, taxes, property insurance, homeowners’ or condominium association fee payments, and assessments related to the property whether or not they are included in the mortgage payment.
- Monthly payments on all closed-end subordinate mortgages.
- Payments on all installment debts with more than 10 months of payments remaining, including debts that are in a period of either deferment or forbearance. When payments on an installment debt are not on the credit report or are listed as deferred, the servicer must obtain documentation to support the payment amount included in the monthly debt payment. If no monthly payment is reported on a student loan that is deferred or is in forbearance, the servicer must obtain documentation verifying the proposed monthly payment amount, or use a minimum of 1.5 percent of the balance.
- Monthly payment on revolving or open-end accounts, regardless of the balance. In the absence of a stated payment, the payment will be calculated by multiplying the outstanding balance by 3 percent.
- Monthly payment on a HELOC must be included in the payment ratio using the minimum monthly payment reported on the credit report. If the HELOC has a balance but no monthly payment is reported, the servicer must obtain documentation verifying the payment amount, or use a minimum of 1 percent of the balance.
- Alimony, child support, and separate maintenance payments with more than 10 months of payments remaining, if supplied by the borrower.
- Car lease payments, regardless of the number of payments remaining.
- Aggregate negative net rental income from all investment properties owned, if supplied by the borrower.

- Monthly mortgage payment for a second home (PITI and, when applicable, mortgage insurance, leasehold payments, homeowners' association dues, condominium unit or cooperative unit maintenance fees (excluding unit utility charges)).

Total Monthly Debt Ratio

The borrower's total monthly debt ratio ("back-end ratio") is the ratio of the borrower's monthly gross expenses divided by the borrower's monthly gross income. Servicers will be required to send the HAMP Counseling Letter to borrowers with a post-HAMP modification back-end ratio equal to or greater than 55 percent. The letter states that the borrower must work with a HUD-approved housing counselor on a plan to reduce their total indebtedness below 55 percent. The letter also describes the availability and advantages of counseling and directs the borrower to the appropriate HUD website where a list of housing counseling agencies is located. The borrower must represent in writing in the Agreement that he or she will obtain such counseling.

Fannie Mae encourages face-to-face counseling; however, telephone counseling is also permitted from HUD-approved housing counselors that covers the same topics as face-to-face sessions. Telephone counseling sessions provide flexibility to borrowers who are unable to attend face-to-face sessions or who do not have an eligible provider within their area.

A list of approved housing counseling agencies is available at hud.gov or by calling the toll-free housing counseling telephone referral service at 1-800-569-4287. A servicer must retain in its mortgage files evidence of the borrower notification.

There is no charge to either the borrower or the servicer for this counseling.

Section 610.03.08
Mortgage Loans with No
Due-on-Sale Provision
(04/21/09)

If a mortgage loan that is not subject to a due-on-sale provision is modified under HAMP, the borrower agrees that HAMP will cancel the assumability feature of that mortgage loan.

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**Section 610.03.09
Escrow Accounts
(04/21/09)**

All of the borrower's monthly payments must include a monthly escrow amount unless prohibited by applicable law. The servicer must assume full responsibility for administering the borrower's escrow deposit account in accordance with the mortgage documents and all applicable laws and regulations. If the mortgage loan being considered for HAMP is a non-escrowed mortgage loan, the servicer must establish an escrow deposit account in accordance with *Part III, Section 103, Escrow Deposit Accounts*. The escrow account must be established prior to the beginning of the trial period. Servicers may perform an escrow analysis based on estimates prior to extending a trial period plan offer. However, if a servicer estimates the escrow payments for the trial period plan, the servicer is not permitted to use national averages in the estimate calculations. Prior to determining the borrower's eligibility for HAMP based on verified documentation, servicers must complete an escrow analysis to determine the escrow payments.

When performing an escrow analysis, servicers should take into consideration tax and insurance premiums that may come due during the trial period. When the borrower's escrow account does not have sufficient funds to cover an upcoming expense and the servicer advances the funds necessary to pay an expense to a third party, the amount of the servicer advance that is paid to a third party may be capitalized.

In the event the initial 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 that is identified at the time of HAMP eligibility 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 of HAMP.

When a servicer spreads the escrow shortage identified during the HAMP eligibility process over a 60-month period, any subsequent shortage that may be identified in the next annual analysis cycle should be spread out over the remaining term of the initial 60-month period. For example, if the next analysis cycle is performed 12 months after the initial escrow shortage is identified, any additional shortage identified in that analysis cycle should be spread over the remaining 48-month period.

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**Section 610.03.10
Compliance with
Applicable Laws
(04/21/09)**

Fannie Mae reminds each servicer (and any subservicer it uses) to be aware of, and in full compliance with, all federal, state, and local laws (including statutes, regulations, ordinances, administrative rules and orders that have the effect of law, and judicial rulings and opinions), including, but not limited to, the following laws that apply to any of its practices related to HAMP:

- Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices.
- The Equal Credit Opportunity Act and the Fair Housing Act, which prohibit discrimination on a prohibited basis in connection with mortgage transactions. Loan modification programs are subject to the fair lending laws, and servicers and lenders should ensure that they do not treat a borrower less favorably than other borrowers on grounds such as race, religion, national origin, sex, marital or familial status, age, handicap, or receipt of public assistance income in connection with any loan modification. These laws also prohibit redlining.
- The Real Estate Settlement Procedures Act, which imposes certain disclosure requirements and restrictions relating to transfers of the servicing of certain loans and escrow accounts.
- The Fair Debt Collection Practices Act, which restricts certain abusive debt collection practices by collectors of debts, other than the creditor, owed or due to another.

**Section 610.04
Modification Process
(06/01/10)**

This section provides guidance to servicers for the adoption and implementation of the HAMP process.

**Section 610.04.01
Borrower Solicitation
(06/01/10)**

Servicers may only solicit a borrower for HAMP if the borrower is currently two or more payments (31 or more days) past due. A servicer may also receive calls from current or delinquent borrowers inquiring about the availability of HAMP. A servicer should work with such borrowers to obtain the borrower's financial and hardship information and to determine if HAMP is appropriate. The servicer may not require a borrower to make an up-front cash contribution (other than the first trial period payment) for a borrower to be considered for HAMP.

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As outlined in *Section 203, Letters (01/01/11)*, a servicer must send a first foreclosure prevention solicitation letter to the borrower 35 to 45 days after the payment due date, which must solicit the borrower for participation in HAMP and include the detail contained in the sample [*Solicitation Letter*](#) prepared by Fannie Mae (which includes Fannie Mae's logo). Should a servicer not receive a response from the borrower within 30 days of sending the solicitation letter for HAMP, the servicer should pursue other remedies, including foreclosure. A servicer should not delay sending a breach letter, when required, while awaiting a response from the borrower. Fannie Mae's approval of the servicer's foreclosure prevention solicitation letter is not required.

When discussing HAMP, the servicer should provide the borrower with information designed to help the borrower understand the modification terms that are being offered and the modification process. Such communication should help minimize potential borrower confusion, foster good customer relations, and improve legal compliance and reduce other risks in connection with the transaction. A servicer also must provide a borrower with clear and understandable written information about the material terms, costs, and risks of the modified mortgage loan in a timely manner to enable borrowers to make informed decisions. The servicer should inform the borrower during discussions that a modification under HAMP will cancel any assumption, variable or step-rate feature, or enhanced payment options (for example, Timely Payment Rewards®) in the borrower's existing mortgage loan, at the time the mortgage loan is modified.

Fannie Mae expects servicers to have adequate staffing, resources, and facilities for receiving and processing the HAMP documents and any requested information that is submitted by borrowers. Servicers must have procedures and systems in place to be able to respond to inquiries and complaints about HAMP. Servicers should ensure that such inquiries and complaints are provided fair consideration, and timely and appropriate responses and resolution.

Section 610.04.02
Borrower Notices
(06/01/10)

A mortgage loan is evaluated for HAMP when one of the following events has occurred:

- A borrower has submitted a written request (either hardcopy or electronic submission) for consideration for a HAMP modification that

includes, at a minimum, current borrower income and a reason for default or explanation of hardship, as applicable.

- A borrower has been offered a trial period plan.

A servicer must send a written notice to every borrower that has been evaluated for HAMP but is not offered a trial period plan, is not offered a permanent HAMP modification, or is at risk of losing eligibility for HAMP because he or she has failed to provide required financial documentation. The notices must comply with all laws, rules, and regulations including, but not limited to, the Equal Credit Opportunity Act, applicable to the transaction.

When a borrower is evaluated for HAMP and the borrower is not offered a trial period plan or official HAMP modification, servicers are required to provide data specified in Schedule IV of [Supplemental Directive 09-06](#) to Fannie Mae as Treasury's program administrator. The data reporting requirements in Schedule IV are designed to document the disposition of borrowers evaluated for HAMP.

Whenever a servicer is required to provide data specified in Schedule IV, the servicer must also send the appropriate Borrower Notice. With the exception of the Notice of Incomplete Information, all borrower notices must be mailed no later than 10 business days following the date of the servicer's determination that a trial period plan or official HAMP modification will not be offered. Borrower notices may be sent electronically only if the borrower has previously agreed to exchange correspondence relating to the modification with the servicer electronically.

The content of the notice will vary depending on the information intended to be conveyed or the determination made by the servicer. All notices must be written in clear, non-technical language, with acronyms and industry terms such as "NPV" explained in a manner that is easily understandable. The explanation(s) should relate to one or more of the model clauses specified in *Exhibit 2: Model Clauses for Borrower Notices*. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the requirements of this *Servicing Guide*.

Notice of Non-Approval

For borrowers not approved for a HAMP modification, this notice must provide the primary reason or reasons for the non-approval. The notice must also describe other foreclosure prevention alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, preforeclosure sale, or deed-in-lieu of foreclosure, and identify the steps the borrower must take in order to be considered for those alternatives. If the servicer has already approved the borrower for another foreclosure prevention alternative, information necessary to participate in or complete the alternative should be included. The notice should be clear that the borrower was considered for but is not eligible for HAMP.

When the borrower is not approved for a HAMP modification because the mortgage loan is deemed NPV negative, the notice must include a list of certain input fields that are considered to reach the NPV result and a statement that the borrower may, within 30 calendar days of the date of the notice, request the date the NPV test was completed and the values used to populate the NPV input fields. The purpose of providing this information is to allow the borrower the opportunity to correct values that may have impacted the analysis of the borrower's eligibility.

If the borrower (or the borrower's authorized representative) requests the specific NPV values orally or in writing within 30 calendar days from the date of the notice, the servicer must provide them to the borrower within 10 calendar days of the request. If the mortgage loan is scheduled for foreclosure sale when the borrower requests the NPV values, the servicer may not complete the foreclosure sale until 30 calendar days after the servicer delivers the NPV values to the borrower. This will allow the borrower time to make a request to correct any values that may have been inaccurate.

Upon receipt of written evidence from the borrower indicating that one or more of the NPV values is inaccurate, the servicer must verify the evidence and, if accurate, must re-run the NPV calculation if the correction is material and is likely to change the NPV outcome. Values that are not affected by the correction do not need to be changed from the first NPV calculation. If the borrower identifies inaccuracies in the NPV values, the servicer must suspend the foreclosure sale until the

inaccuracies are reconciled. Servicers are not required to provide the numeric NPV results or NPV input values not enumerated in *Exhibit 1: NPV Versioning Requirements*.

Notice of Payment Default During the Trial Period Plan

The servicer must inform the borrower that he or she failed to make a trial period payment by the end of the month in which such trial period payment was due and is in default. The notice must also describe other foreclosure prevention alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, preforeclosure sale, or deed-in-lieu of foreclosure, and identify the steps the borrower must take in order to be considered for these alternatives. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. The notice should be clear that the borrower was considered for but is not eligible for HAMP.

Notice of Mortgage Loan Pay-Off or Reinstatement

To confirm that the mortgage loan was paid off or reinstated, the servicer must provide notice, which includes the payoff or reinstatement date. If the mortgage loan was reinstated, this notice must include a statement that the borrower may contact the servicer to request reconsideration under HAMP if he or she experiences a subsequent financial hardship.

Notice of Withdrawal of Request or Non-Acceptance of Offer

The servicer must confirm that the borrower withdrew the request for consideration for a HAMP modification or did not accept either a trial period plan or a HAMP modification offer. Failure to make the first trial period payment in a timely manner is considered non-acceptance of the trial period plan.

Incomplete Information Notice

If the servicer receives an incomplete Initial Package or needs additional documentation to verify the borrower's eligibility and income, the servicer must send the borrower an Incomplete Information Notice. A list of all the financial documents needed to complete the HAMP evaluation and a date

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by which the information must be received, which must be no less than 30 calendar days from the date of the notice, before the borrower becomes ineligible for HAMP must be included in an Incomplete Information Notice. If the documents are not received by the date specified in the notice, the servicer must attempt at least three phone calls to the borrower between the 5th and 15th day after the solicitation is mailed, send a follow-up letter on the 15th day, which should again include a list of all financial documents needed to complete the HAMP evaluation and a date by which the information must be received, which must be no less than 15 calendar days from the date of the second notice, and attempt three phone calls between the 15th and 30th day. If the borrower fails to provide all required verification documents by the date provided in the second notice, the servicer will declare the borrower ineligible for a modification and send the borrower a Non-Approval Notice.

All notices must also include the following:

- a toll-free number through which the borrower can reach a servicer representative capable of providing specific details about the contents of the borrower notice and reasons for a non-approval determination;
- the Homeowner's HOPE™ Hotline number (888-995-HOPE™), with an explanation that the borrower can seek assistance at no charge from HUD-approved housing counselors and can request assistance in understanding the notice by asking for MHA HELP; and
- any information, disclosures, or notices required by the borrower's mortgage documents and applicable federal, state, and local law.

Section 610.04.03
Document Retention
(06/01/10)

Servicers must retain all documents and information received during the process of determining borrower eligibility, including borrower income verification, total monthly mortgage payment and total monthly gross debt payment calculations, NPV calculations (NPV model and version used, assumptions, inputs, and outputs), evidence of application of each step of the modification waterfall, escrow analysis, escrow advances, and escrow set-up. The servicers must retain all documents and information related to the monthly payments during and after the trial period as well as the incentive payment calculations and such other required documents.

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Servicers must retain detailed records of borrower solicitations or borrower-initiated inquiries regarding HAMP, the outcome of the evaluation for modification under HAMP, and specific justification with supporting details if the request for modification under HAMP was denied. Records must also be retained to document the reason(s) that a trial period plan is not finalized. If a borrower under a HAMP modification loses good standing, the servicer must retain documentation of its consideration of the borrower for other foreclosure prevention alternatives. Servicers must retain HAMP documentation as prescribed in Part I, Section 405: Record Retention, or for seven years from the date of document collection, whichever is later.

**Section 610.04.04
Temporary Suspension of
Foreclosure Proceedings
(04/21/09)**

To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for HAMP, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program and, if eligible, an offer to participate in HAMP has been made. Servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for HAMP, including in-person contacts at the servicer's discretion. Servicers must not conduct foreclosure sales on mortgage loans previously referred to foreclosure or refer new mortgage loans to foreclosure during the 30-day period that the borrower has to submit documents evidencing an intent to accept the trial period plan offer. Except as noted herein, any foreclosure sale will be suspended for the duration of the trial period plan, including any period of time between the borrower's execution of the trial period plan and the Trial Period Plan Effective Date. However, borrowers in Georgia, Hawaii, Missouri, and Virginia will be considered to have failed the trial period if they are not current under the terms of the trial period plan as of the date that the foreclosure sale is scheduled. Accordingly, servicers of HAMP loans secured by properties in these states must proceed with the foreclosure sale if the borrower has not made the trial period payments required to be made through the end of the month preceding the month in which the foreclosure sale is scheduled to occur.

**Section 610.04.05
Mortgage Insurer
Approval (04/21/09)**

Fannie Mae has obtained blanket delegations of authority from most mortgage insurers so that servicers can more efficiently process HAMP modifications without having to obtain mortgage insurer approval on individual mortgage loans. A list of the mortgage insurers from which Fannie Mae has received a delegated authority agreement can be found on eFannieMae.com. If applicable, servicers must continue to obtain

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mortgage insurer approval on a case-by-case basis from any mortgage insurer for which Fannie Mae has not yet received a delegated authority agreement. Servicers should consult their mortgage insurance providers for specific processes related to the reporting of modified terms, payment of premiums, payment of claims, and other operational matters in connection with mortgage loans modified under HAMP.

Section 610.04.06
Executing the HAMP
Documents (06/01/10)

Servicers must use a two-step process for HAMP modifications. Step 1 involves providing a document outlining the terms of the forbearance (the [Trial Period Plan Notice](#)), and step 2 involves providing the borrower with a separate document (the Agreement) outlining the terms of the modification.

Step 1: A servicer shall require a borrower to submit the required documentation, the Initial Package, to verify the borrower's eligibility and income prior to sending the borrower a [Trial Period Plan Notice](#).

The servicer should use the [HAMP Documentation Request Letter](#) to obtain the Initial Package from the borrower. The servicer should instruct the borrower to return the Initial Package within 30 days from the date the [HAMP Documentation Request Letter](#) is sent by the servicer.

Within 10 business days following receipt of an Initial Package, the servicer must acknowledge, in writing, the borrower's request for HAMP participation by sending the borrower confirmation that the Initial Package was received, and a description of the servicer's evaluation process and timeline. If the Initial Package is received from the borrower via e-mail, the servicer may e-mail the acknowledgment. Servicers must maintain evidence of the date of receipt of the borrower's Initial Package in its records.

Within 30 calendar days from the date an Initial Package is received, the servicer must review the documentation provided by the borrower for completeness. If the documentation is incomplete, the servicer must send the borrower an Incomplete Information Notice in accordance with the guidance set forth in *Section 610.04.02, Borrower Notices (06/01/10)*, under "Incomplete Information Notice.". If the borrower's documentation is complete, the servicer must either:

- send the borrower a [Trial Period Plan Notice](#); or

- make a determination that the borrower is not eligible for HAMP and communicate this determination to the borrower in accordance with *Section 610.04.02, Borrower Notices (06/01/10)*.

The written communication sent within 10 days of receipt of a borrower's request for HAMP participation may also include, at the servicer's discretion, the results of its review of the Initial Package.

Servicers must retain a copy of the [*Trial Period Plan Notice*](#) in the mortgage loan file and note the date that it was sent to the borrower. Receipt of the first trial period payment under the [*Trial Period Plan Notice*](#) on or before the last day of the month in which the first payment is due will be deemed as evidence of the borrower's acceptance of the trial period plan and its terms and conditions. The effective date of the trial period will be set forth in the trial period plan and is the first day of the month in which the first trial period plan payment is due.

The servicer is encouraged to contact the borrower before the last day of the month in which the first trial period plan payment is due if the borrower has not yet responded to encourage submission of the payment. The servicer may, at its discretion, consider the offer of a trial period plan to have expired if the borrower has not submitted payment as required above.

HAMP program guidelines require that, unless a borrower or co-borrower is deceased or borrower and co-borrower are divorced, all parties who sign the original note OR the security instrument, or their duly authorized representative, must sign the HAMP documents. In cases where a borrower and co-borrower are unmarried and either borrower or co-borrower relinquish all rights to the property securing the mortgage loan through a recorded quitclaim deed, the non-occupying borrower that has relinquished property rights is not required to provide income documentation or to sign the HAMP documents but remains liable for the outstanding mortgage debt.

Servicers may encounter circumstances where a co-borrower signature is not obtainable, for reasons such as mental incapacity, military deployment, or contested divorce. When a co-borrower's signature is not obtainable and the servicer decides to continue with the HAMP modification, the

servicer must appropriately document the basis for the exception in the servicing records.

Step 2: The borrower must be current under the terms of the trial period plan at the end of the trial period to receive a permanent loan modification. “Current” in this context is defined as the borrower having made each required trial period payment by the last day of the month in which it is due. Borrowers who fail to make current trial period payments are considered to have failed the trial period and are not eligible for a HAMP modification. Servicers are instructed to use good business judgment in determining whether trial period payments were received timely or if mitigating circumstances caused the payment to be late. Exceptions should be documented in the servicing records.

Servicers must calculate the terms of the modification using verified income, taking into consideration amounts to be capitalized during the trial period. Servicers are encouraged to send the Agreement for execution by the borrower after receipt of the second payment under the trial period (or third payment for mortgage loans facing imminent default, which require a four-month trial period).

Acceptable Revisions to HAMP Documents

Servicers must use the *Home Affordable Modification Agreement* ([Form 3157](#)) and are strongly encouraged to use the other HAMP documents provided on [eFannieMae.com](#). The Home Affordable Modification Agreement can only be modified as authorized in its document summary.

Should a servicer decide to revise one of the other HAMP documents or draft its own HAMP documents, it must obtain prior written approval from Fannie Mae with the exception of the following circumstances:

- The servicer must revise the HAMP documents as necessary to comply with Federal, state, and local law. For example, in the event that HAMP results in a principal forbearance, servicers are obligated to modify the uniform instrument to comply with laws and regulations governing balloon disclosures.

- Fannie Mae’s approval is not required for the servicer’s foreclosure prevention solicitation letter, which must solicit the borrower for participation in HAMP and include the detail contained in the sample [Solicitation Letter](#) prepared by Fannie Mae.
- The servicer may include, as necessary, conditional language in HAMP offers and modification agreements that condition the implementation of any modification on the servicer’s receipt of an acceptable title endorsement, or similar title insurance product, as necessary, to ensure that the modified mortgage loan retains its first-lien position and is fully enforceable.
- If the borrower previously received a Chapter 7 bankruptcy discharge but did not reaffirm the mortgage debt under applicable law, the following language must be inserted in Section 1 of the [Trial Period Plan Notice](#) and Section 1 of the Agreement: “I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”
- The servicer may include language in the [Trial Period Plan Notice](#) providing instructions for borrowers who elect to use an automated payment method to make trial period payments.

Use of Electronic Records

Electronic documents and signatures for HAMP (other than for Form 4506-T and Form 4506T-EZ) are acceptable as long as the electronic record complies with all requirements of the *Selling and Servicing Guides* and applicable law.

Assignment to MERS

If the original mortgage loan was registered with MERS and MERS was named as the original mortgagee of record, (as nominee for the lender), the servicer **MUST** make the following changes to the Agreement:

- Insert a new definition under the “Property Address” definition on page 1, which reads as follows:

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“MERS” is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for lender and lender’s successors and assigns. MERS is the mortgagee under the Mortgage. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, (888) 679-MERS.

- Add as section 4.I:

That MERS holds only legal title to the interests granted by the borrower in the mortgage, but, if necessary to comply with law or custom, MERS (as nominee for lender and lender’s successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of lender including, but not limited to, releasing and canceling the mortgage loan.

- MERS must be added to the signature lines at the end of the Agreement, as follows:

Mortgage Electronic Registration
Systems, Inc. – Nominee for Lender

The servicer may execute the Agreement on behalf of MERS and, if applicable, submit it for recordation.

Section 610.04.07
Trial Payment Period
(06/01/10)

The servicer must service the mortgage loan during the trial period in the same manner as it would service a mortgage loan in forbearance. During the trial period for MBS mortgage loans, the mortgage loan will remain in the related MBS pool and the servicer must continue to service the mortgage loan under Fannie Mae’s standard guidelines applicable to MBS mortgage loans. (Refer to *Section 610.04.09, Reclassification or Removal of MBS Mortgage Loans Prior to Effective Date of Modification (03/01/10).*)

A borrower’s trial period starts on the Trial Period Plan Effective Date, which is a field in the [Trial Period Plan Notice](#) that is completed by the servicer. The effective date is based on the date the servicer mails the [Trial Period Plan Notice](#) to the borrower. If the servicer mails the [Trial Period](#)

[Plan Notice](#) to the borrower on or before the 15th day of a calendar month, then the servicer must insert the first day of the next month as the Trial Period Plan Effective Date. If the servicer mails the [Trial Period Plan Notice](#) to the borrower after the 15th day of a calendar month, the servicer must use the first day of the month after the next month as the Trial Period Plan Effective Date. The date of the [Trial Period Plan Notice](#) will be used to verify the Trial Period Plan Effective Date. For example, if the servicer mails the [Trial Period Plan Notice](#) to the borrower on June 2nd, the servicer should use July 1st as the Trial Period Plan Effective Date. If the servicer mails the [Trial Period Plan Notice](#) to the borrower on June 27th, the servicer should use August 1st as the Trial Period Plan Effective Date.

The trial payment period is three months long for mortgage loans where the payment is already in default and four months long for mortgage loans where the servicer has determined that a borrower's payment default is imminent but no default has occurred. The borrower must be current under the terms of the trial period plan at the end of the trial period in order to receive a permanent modification. "Current" in this context is defined as the borrower having made each required trial period payment by the last day of the month in which it is due. Borrowers who fail to make current trial period payments are considered to have failed the trial period and are not eligible for a HAMP modification.

The date that the first trial period payment is due under the terms of the trial period plan must be the same date as the Trial Period Plan Effective Date. The servicer must receive the borrower's first trial period payment on or before the last day of the month in which the Trial Period Plan Effective Date occurs ("Trial Period Offer Deadline"). The servicer must consider the trial period plan offer to have expired if the servicer does not receive the borrower's first trial period payment by the Trial Period Offer Deadline.

Although the borrower may make scheduled payments earlier than expected, under HAMP, the length of the Trial Period is set forth in the applicable trial period plan, and such payments may not result in acceleration of the modification effective date. There is no variation to this rule.

Borrowers who file bankruptcy during the trial period, but who make all of the required payments in a timely fashion and are otherwise in

compliance with the trial period plan, remain eligible for a modification provided all of the representations in Section 1 of the trial period plan remain true. The servicer and its bankruptcy counsel must work with the borrower and the borrower's bankruptcy counsel to obtain any required court approvals of the modification. A borrower actively involved in a bankruptcy proceeding prior to being placed in HAMP is eligible for HAMP at the servicer's discretion. If a servicer provides an offer under HAMP to a borrower that is involved in an active bankruptcy case, the servicer must work with the borrower or borrower's counsel to obtain all necessary approvals from the bankruptcy court.

For a borrower facing imminent default, the borrower's payment during the trial period must not be equal to or greater than the contractual mortgage payment in effect prior to the trial period.

If the Agreement is fully executed and the borrower complies with the terms and conditions of the trial period plan, the loan modification will become effective on the first day of the month following the trial period as specified in the [Trial Period Plan Notice](#) and the Agreement. The servicer may, at its option, complete the Agreement such that the modification becomes effective on the first day of the second month *following* the final trial period month to allow for sufficient processing time. In either instance, the modification effective date and the due date for the first payment under the Agreement must be the same date. A servicer must treat all borrowers the same in applying this option by selecting, at its discretion and evidenced by a written policy, the date by which the final trial period payment must be submitted before the servicer applies this option ("cutoff date"). The cutoff date must be after the due date for the final trial period payment set forth in Section 2 of the [Trial Period Plan Notice](#).

If the servicer elects this option, the borrower will not be required to make an additional trial period payment during the month (the "interim month") in between the final trial period month and the month in which the modification becomes effective. For example, if the last trial period month is March and the servicer elects the option described above, the borrower is not required to make any payment during April, and the modification becomes effective, and the first payment under the Agreement is due, on May 1st.

Neither the borrower nor the servicer will be entitled to accrue incentive compensation for the interim month if the borrower does not make a trial period payment during the interim month. The servicer must modify the [Home Affordable Modification Agreement Cover Letter](#) to inform the borrower about (i) the delay of the modification effective date by one month and (ii) the effects of the interim month and the delay in the effective date of the Agreement, including, but not limited to, the delay in the effective date of the modified interest rate, the increase in the delinquent interest capitalized, and the loss of one month's accrual of the incentive payment if the borrower does not make an additional trial period payment.

If a servicer has information that the borrower does not meet all of the eligibility criteria for HAMP (for example, because the borrower has moved out of the house), the servicer should explore other foreclosure prevention alternatives prior to resuming or initiating foreclosure.

**Section 610.04.08
Use of Suspend
Accounts and Application
of Payments (04/21/09)**

In accordance with *Part III, Section 102.06, Pending Modifications*, and, if permitted by the applicable mortgage loan documents, servicers may accept and hold as "unapplied funds" (held in a T&I custodial account) amounts received which do not constitute a full monthly, contractual PITI payment. However, when the total of the reduced payments held as "unapplied funds" is equal to a full PITI payment, the servicer is required to apply all full payments to the mortgage loan.

Any unapplied funds remaining at the end of the trial payment period which do not constitute a full monthly, contractual PITI payment should be applied to reduce any amounts that would otherwise be capitalized onto the principal balance.

**Section 610.04.09
Reclassification or
Removal of MBS
Mortgage Loans Prior to
Effective Date of
Modification (03/01/10)**

For an MBS mortgage loan to be eligible for reclassification from an MBS pool for the purpose of modification, the mortgage loan must have been in a continuous state of delinquency for at least four consecutive monthly payments (or at least eight consecutive payments in the case of a biweekly mortgage loan) without a full cure of the delinquency.

A delinquent MBS mortgage loan that is serviced under the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property generally will be removed from its MBS pool in

accordance with Fannie Mae's procedures for automatic reclassification of delinquent MBS mortgage loans as portfolio mortgage loans.

For MBS mortgage loans that are not subject to Fannie Mae's automatic reclassification process, Fannie Mae will select for reclassification those mortgages that are part of an MBS pool that are serviced under the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property and that are reported through HSSN as having made all of the required HAMP trial period payments in the final month of the trial period. Thus, during the trial period it is very important that servicers timely report to Fannie Mae the receipt of funds from the borrower.

Reclassification of MBS Mortgage Loans – Imminent Default

For mortgage loans from MBS pools where the servicer has determined that a borrower's payment default is imminent and thus requiring four trial period payments, reclassifications are subject to the following:

- As long as the borrower has made the fourth payment and the servicer has accepted the payment and notified Fannie Mae of receipt of the payment before the servicer's reclassification date in the fourth month of the trial period, Fannie Mae will reclassify the mortgage loan during the fourth month of the trial period.
- If, prior to the close of the servicer's reclassification date in the fourth month, (i) the borrower has not made the fourth payment, or (ii) the servicer has not applied the fourth payment and notified Fannie Mae that the payment has been made, then it will not be possible to reclassify the loan from the MBS pool prior to the modification effective date. In the event that the fourth trial period payment is received after the 15th calendar day (i.e., servicer's reclassification date) of the fourth month of the trial period but before the end of the trial period, the servicer must extend the trial period by one month.

Reclassification of MBS Mortgage Loans – Payment in Default

For any MBS mortgage loan that already has a payment in default at the time HAMP is negotiated and three trial period payments are required, reclassifications are subject to the following:

- As long as the borrower has made the third payment and the servicer has accepted the payment and notified Fannie Mae of receipt of the payment before the servicer's reclassification date in the third month of the trial period, Fannie Mae will reclassify the mortgage loan during the third month of the trial period.
- If, prior to the close of the servicer's reclassification date in the third month, (i) the borrower has not made the third payment, or (ii) the servicer has not applied the third payment and notified Fannie Mae that the payment has been made, then it will not be possible to reclassify the loan from the MBS pool prior to the modification effective date. In the event that the third trial period payment is received after the 15th calendar day (i.e., servicer's reclassification date) of the third month of the trial period but before the end of the trial period, the servicer must extend the trial period by one month.

Conditions of Modification

If the required trial period payments are not made by the end of the trial period, the preconditions to make the modification effective will not have been satisfied and Fannie Mae will cancel the case. The servicer must ensure that the loan modification is not implemented.

Modification agreements must be signed by an authorized representative of the servicer, must reflect the actual date of signature by the servicer's representative, and the signature must not occur until after the mortgage loan has been removed from the MBS pool, and reclassified as a Fannie Mae portfolio mortgage loan. Additionally, payments received should only be applied in accordance with the modified terms once the servicer has confirmed that Fannie Mae has reclassified the mortgage loan. Servicers can confirm that Fannie Mae has reclassified a mortgage loan by reviewing the Purchase Advice that is posted on SURF.

After a mortgage loan is reclassified, the servicer will follow the existing procedure and update the Officer Signature Date in HSSN to close the modification.

A current MBS mortgage loan is ineligible for reclassification for the purpose of modifying the mortgage loan.

Removal of Regular Servicing Option MBS Mortgage Loans

Servicers of regular servicing option MBS mortgage loans are encouraged to offer HAMP for these mortgage loans. If a servicer decides to use HAMP for such mortgage loans, the servicer will be expected to follow the Treasury's Home Affordable Modification Program, sign the [Servicer Participation Agreement](#), obtain any third-party approvals, and comply with the requirements of this *Servicing Guide* governing reporting and removal of these mortgage loans from MBS pools, if applicable. Fannie Mae is not responsible for any losses or expenses the servicer incurs and will not pay borrower or servicer incentive fees for these mortgage loans which are not considered Fannie Mae HAMP mortgage loans.

The servicer of a mortgage loan that is part of a regular servicing option MBS pool or part of a shared-risk special servicing option MBS pool for which the servicer's shared risk liability has not expired must not modify the mortgage loan as long as it remains in the MBS pool. The servicer must purchase the mortgage loan from the MBS pool upon completion of the trial period provided the mortgage loan has been in a continuous state of delinquency for at least four consecutive monthly payments (or at least eight consecutive payments in the case of a biweekly mortgage loan) without a full cure of the delinquency. Regular servicing option MBS mortgage loans and such shared-risk special servicing option MBS mortgage loans that have been purchased from an MBS pool for purposes of modification are not eligible for redelivery to Fannie Mae. Performing MBS mortgage loans (that is, those that do not meet the delinquency criteria described above) are ineligible for repurchase for the purpose of modifying the mortgage loan.

**Section 610.04.10
Recording the
Modification (12/14/09)**

For all mortgage loans that are modified pursuant to HAMP, the servicer must ensure that the modified mortgage loan retains its first-lien position and is fully enforceable. The Agreement must be executed by the borrower(s) and, in the following circumstances, must be in recordable form:

- if state or local law requires a modification agreement be recorded to be enforceable;
- if the property is located in the State of New York or Cuyahoga County, Ohio;

- if the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's mortgage modification alternatives);
- if the final interest rate on the modified mortgage loan is greater than the pre-modified interest rate in effect on the mortgage loan;
- if the remaining term on the mortgage loan is less than or equal to ten years and the servicer is extending the term of the mortgage loan more than ten years beyond the original maturity date; or
- if the servicer's practice for modifying mortgage loans in the servicer's portfolio is to create modification agreements in recordable form.

In addition, to retain the first-lien position, servicers must:

- ensure that all real estate taxes and assessments that could become a first lien are current, especially those for manufactured homes taxed as personal property, personal property taxes, condominium/HOA fees, utility assessments (such as water bills), ground rent and other assessments;
- obtain a title endorsement or similar title insurance product issued by a title insurance company if the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's mortgage modification alternatives); or if the final interest rate on the modified mortgage loan is greater than the interest rate in effect prior to modification of the mortgage loan; and
- record the executed Agreement if (1) state or local law requires the modification agreement be recorded to be enforceable; (2) the property is located in Cuyahoga County, Ohio; (3) the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan completed under Fannie Mae's modification alternatives); (4) the final interest rate on the modified mortgage loan is greater than the interest rate in effect prior to modification of the mortgage loan; or (5) the remaining term on the mortgage loan is less than or equal to ten years and the servicer is

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extending the term of the mortgage loan more than ten years beyond the original maturity date.

**Section 610.04.11
Program Waivers
(11/02/09)**

From time to time, temporary program waivers related to HAMP are posted on HMPadmin.com. Such waivers are applicable to Fannie Mae servicers, and as such, Fannie Mae servicers must ensure compliance with the terms of such waivers.

**Section 610.05
Monthly Statements
(04/21/09)**

For modifications that include principal forbearance, servicers are encouraged to include the amount of the gross UPB on the borrower's monthly payment statement. In addition, the borrower should receive information on a monthly basis regarding the accrual of "pay-for performance" principal balance reduction payments.

**Section 610.06
Redefault and Loss of
Good Standing
(04/21/09)**

If, following a successful trial period, a borrower defaults on a loan modification executed under HAMP (three monthly payments are due and unpaid on the last day of the third month), the mortgage loan is no longer considered to be in "good standing." Once lost, good standing cannot be restored even if the borrower subsequently cures the default. A mortgage loan that is not in good standing is not eligible to receive borrower or servicer incentives and reimbursements and these payments will no longer accrue for that mortgage loan. Further, the mortgage loan is not eligible for another HAMP modification.

In the event a borrower defaults, the servicer must work with the borrower to cure the modified loan, or if that is not feasible, evaluate the borrower for any other available foreclosure prevention alternatives prior to commencing foreclosure proceedings.

**Section 610.07
Servicer Delegation,
Duties, and
Responsibilities
(04/21/09)**

All servicers are eligible to participate in HAMP without obtaining prior approval from Fannie Mae.

In performing the duties incident to the servicing of mortgage loans modified under HAMP, a servicer must:

- Collect and record the details of all executed mortgage modifications, including, but not limited to: the original terms of the modified mortgage loan; the modified terms of the modified mortgage loan; data supporting the modification decision; updates to payoff information and the last payment date; and additional information and data as may

be requested by Fannie Mae from time to time. All such data must be compiled and reported to Fannie Mae in the form and manner set forth in this *Servicing Guide*.

- Retain all data, books, reports, documents, audit logs, and records, including electronic records, related to HAMP. In addition, the servicer shall maintain a copy of all computer systems and application software necessary to review and analyze any electronic records. Unless otherwise directed by Fannie Mae, the servicer shall retain these records for mortgage loans owned or securitized by Fannie Mae in accordance with *Part I, Section 405, Record Retention*, or for such longer period as may be required pursuant to applicable law.
- Construe the terms of this *Servicing Guide* and any related instructions from the Treasury or Fannie Mae in a reasonable manner to serve the purposes and interests of the United States.
- Use any nonpublic information or assets of the United States or Fannie Mae received or developed in connection with HAMP solely for the purposes of fulfilling its obligations hereunder.
- Comply with all lawful instructions or directions received from the Treasury and Fannie Mae.
- Develop, enforce, and review for effectiveness at least annually, an internal control program designed to ensure effectiveness of duties in connection with HAMP and compliance with this *Servicing Guide*, to monitor and detect loan modification fraud, and to monitor compliance with applicable consumer protection and fair lending laws. The internal control program must include documentation of the control objectives for HAMP activities, the associated control techniques, and mechanisms for testing and validating the controls.
- Provide Fannie Mae with access to all internal control reviews and reports that relate to duties performed under HAMP by the servicer and/or its independent auditing firm.
- Supervise and manage any contractor that assists in the performance of services in connection with HAMP. A servicer shall remove and replace any contractor that fails to perform and ensure that all of its

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contractors comply with the terms and provisions of this *Servicing Guide*. A servicer shall be responsible for the acts or omissions of its contractors as if the acts or omissions were those of the servicer.

Section 610.08
Reporting Requirements
(06/01/10)

Servicers must comply with the following mortgage loan reporting requirements for all Fannie Mae mortgage loans.

Section 610.08.01
Reporting to Fannie Mae
(06/01/10)

For all Fannie Mae portfolio mortgage loans and MBS mortgage loans guaranteed by Fannie Mae (including lender recourse loans), a servicer must enter loan-level HAMP data by submitting a delegated case into HSSN when a servicer has received the borrower's Initial Package, including the [RMA](#), the Form 4506-T or 4506T-EZ, and income documentation, and determined that the borrower is eligible for a HAMP modification. Additionally, the servicer must record in HSSN receipt of the trial period payments due under the plan. The servicer must use HSSN to request reclassification for MBS mortgage loans as outlined in the Reclassification or Removal of MBS Mortgage Loans Prior to Effective Date of Modification section when appropriate. The servicer must represent and warrant that, after application of all trial payments made by the borrower, once the sum of payments total a full payment, the borrower has been in a delinquent status (that is, not current in contractual payments) on each of the last four monthly payment due dates and continues to be delinquent. After a mortgage loan is reclassified, if applicable, the servicer will follow the existing procedure and update the Officer Signature Date in HSSN to close the modification.

Existing monthly Loan Activity Record (LAR) reporting requirements for Fannie Mae servicers will not change. Servicers must continue to report the standard LAR format for loan payment by the 3rd business day and for payoff activity by the 2nd business day of each month for the prior month's activity (for example, payoff reporting to be received by April 2nd will contain March activity).

Servicers should report post-modification UPB once the modification is closed in HSSN (for example, if modification is closed on March 25, post-modification balances should be reported on the April 3rd LAR). If the servicer submits a LAR to report post-modification balances before the case is closed in HSSN, an exception will occur.

If the pre-modification UPB, or the pre-modification last paid installment (LPI), reported in HSSN for the closed modification does not agree with the pre-modification UPB, or the pre-modification LPI, in Fannie Mae's investor reporting system, the loan modification will not be processed in Fannie Mae's investor reporting system until the discrepancy is resolved.

If, in the final month of the trial period, the sum of unapplied trial period payments is equal to or greater than a full contractual payment, and the loan modification is closed in the same month, the servicer must report the contractual payment before the post modification balances can be reported. This will require two Loan Activity Records and two reporting cycles to complete.

If the modification includes principal forbearance, the servicer should report the net UPB (full UPB minus the forbearance amount) in the "Actual UPB" field on both LARs for the reporting month that the modification becomes effective. The initial reduction in UPB caused by the principal forbearance should not be reported to Fannie Mae as a principal curtailment. The interest reported on the LAR must be based on the net UPB.

If the modification includes principal forbearance resulting in a balloon payment due upon borrower's sale of the property or payoff, or maturity of the mortgage loan, interest must never be computed on the principal forbearance amount, including at the time of liquidation. When reporting a payoff or repurchase of the mortgage loan, the principal reported on the LAR must include the principal forbearance amount. Attempting to report a payoff or repurchase without including the principal forbearance amount will generate an exception upon submission of the LAR.

If a principal curtailment is received on a mortgage loan that has a principal forbearance, servicers are instructed to apply the principal curtailment to the interest-bearing UPB. If, however, the principal curtailment amount is greater than or equal to the interest-bearing UPB, then the curtailment should be applied to the principal forbearance portion. If the curtailment satisfies the principal forbearance portion, any remaining funds should then be applied to the interest-bearing UPB.

Delinquency Status Reporting

The servicer must report a delinquency status code 09 – Forbearance – during the trial period. The servicer must then report a delinquency status code 28 – Mortgage Modification – to indicate that the delinquency status has changed once the borrower has successfully completed the trial period and the modification becomes effective, if applicable.

In the event that the borrower files bankruptcy during the trial period, servicers must continue to report delinquency status code 09 – Forbearance, until the borrower either successfully completes the trial period, in which case the status code would be changed to reflect 28 – modification, or the borrower fails the trial period, in which case the status code would be changed to reflect the appropriate bankruptcy status code.

Section 610.08.02 Reporting to Treasury (03/01/10)

In addition to reporting to Fannie Mae, each servicer must report periodic HAMP loan activity to Treasury through the servicer web portal accessible through HMPAdmin.com. Data should be reported by a servicer at the start of the modification trial period and during the modification trial period, for loan setup of the approved modification, and monthly after the modification is set up. Servicers will be required to submit three separate data files. Detailed guidelines for submitting these data files and a list of data elements for each report are available at HMPAdmin.com.

The servicer should begin trial period reporting once the servicer receives the borrower's first trial period payment (as long as that payment is received by the servicer on or before the Trial Period Offer Deadline). This data must be submitted to the HAMP reporting system in accordance with the reporting requirements available at HMPAdmin.com no later than the fourth business day of the month immediately following the month in which the Trial Period Plan Effective Date occurs. For example, if the Trial Period Plan Effective Date is July 1st and the servicer receives the borrower's first trial period payment on or before July 31st (including payments received by the servicer prior to July 1st), the servicer must report to Fannie Mae the trial period setup attributes by the fourth business day of August.

The servicer should report the length of the trial period on the loan setup record, excluding the interim month if the borrower does not make an additional trial period payment, and including the interim month if the

borrower does make an additional trial period payment. **Note:** The effects of the interim month and attendant capitalization on the terms of the modification agreement may not alter the servicer's previous determination of the borrower's eligibility.

A one-time loan setup is required to establish the approved modified HAMP loan on Treasury's system. The servicer is required to submit the loan modification setup attributes to the HAMP reporting system no later than the fourth business day of the month in which the modification is effective. For example, if a modification is effective as of September 1st, the servicer must submit the loan setup attributes no later than the fourth business day of September. This new reporting time period is effective immediately.

The month after the loan setup file is provided, servicers must begin reporting activity to Treasury on all HAMP loans on a monthly basis (for example, loan setup file is provided in July, the first Loan Activity Record is due in August for July activity). The monthly reporting data elements are available on HMPAdmin.com. The HAMP Loan Activity Record (LAR) is due by the 4th business day each month.

Servicers must refer to Supplemental Directive 09-06, *Home Affordable Modification Program – Data Reporting Requirements Guidance*, accessible on HMPAdmin.com, to obtain more detailed information on the required data elements and reporting time frames for additional data elements that are required to be reported monthly.

A servicer will receive a username and password for the servicer web portal upon submission of a [HAMP Registration Form](#). All servicers will be required to provide the [HAMP Registration Form](#) with information such as contact information and banking instructions for deposits of compensation payments. The [HAMP Registration Form](#) is a one-time submission; however, after the initial form is submitted, a servicer may submit a new form to update existing information at any time.

Section 610.08.03
Reporting to Mortgage
Insurers (04/21/09)

Servicers must maintain their mortgage insurance processes and comply with all reporting required by the mortgage insurer for mortgage loans modified under HAMP. Servicers should consult with the mortgage insurer for specific processes related to the reporting of modified terms, payment of premiums, payment of claims, and other operational matters in

connection with mortgage loans modified under HAMP. Servicers are required to report successful HAMP modifications and the terms of those modifications to the appropriate mortgage insurers, if applicable, within 30 days following the end of the trial period and in accordance with procedures that currently exist or may be agreed to between servicers and the mortgage insurers.

Maintenance of Mortgage Insurance

Servicers must include the mortgage insurance premium in the borrower's modified payment, and must ensure that any existing mortgage insurance is maintained. Among other things, the servicer must ensure that the mortgage insurance premium is paid. In addition, servicers must adapt their systems to ensure proper reporting of modified mortgage loan terms so as not to impair coverage for any existing mortgage insurance. For example, in the event that the modification includes principal forbearance, servicers must continue to pay the correct mortgage insurance premiums based on the gross UPB, including any principal forbearance amount, must include the gross UPB in their delinquency reporting to the mortgage insurer, and must ensure any principal forbearance does not erroneously trigger automatic mortgage insurance cancellation or termination.

Section 610.08.04 Transfers of Servicing (04/21/09)

When a transfer of servicing includes mortgage loans modified under HAMP, Fannie Mae requires the transferor servicer to provide special notification to the transferee servicer. Specifically, the transferor servicer must advise the transferee servicer that mortgage loans modified under HAMP are part of the portfolio being transferred and must confirm that the transferee servicer is not only aware of the special requirements for these mortgage loans, but also agrees to assume the additional responsibilities associated with servicing these mortgage loans.

The transferee servicer must assume all of the responsibilities and duties of HAMP. However, the transferee servicer's assumption of these responsibilities, duties, and warranties will in no way release the transferor servicer from its contractual obligations related to the transferred mortgage loans. The two servicers will be jointly and severally liable to Fannie Mae for all warranties and for repurchase, all special obligations under agreements previously made by the transferor servicer or any previous servicer or servicer (including actions that arose prior to the

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transfer), and all reporting, compliance, and audit oversight related duties regarding the transferred mortgage loans.

**Section 610.08.05
Credit Bureau Reporting
(04/21/09)**

In accordance with *Section 209, Notifying Credit Repositories (11/01/04)*, the servicer should continue to report a full-file status report to the four major credit repositories for each mortgage loan under HAMP in accordance with the Fair Credit Reporting Act and credit bureau requirements as provided by the Consumer Data Industry Association (CDIA) on the basis of the following:

- For borrowers who are current when they enter the trial period, the servicer should report the borrower current but on a modified payment if the borrower makes timely payments by the 30th day of each trial period month at the modified amount during the trial period, as well as report the modification when completed.
- For borrowers who are delinquent when they enter the trial period, the servicer should continue to report in such a manner that accurately reflects the borrower's delinquency and workout status following usual and customary reporting standards, as well as report the modification when completed.

More detailed information on these reporting standards will be published by the CDIA. However, once a mortgage loan has been modified under HAMP, any Special Comment Code related to HAMP will no longer apply (should be BLANK) as the account has been brought current with the modification, and the borrower is no longer paying under a partial or modified payment agreement.

Full-file reporting means that the servicer must describe the exact status of each mortgage loan it is servicing as of the last business day of each month.

**Section 610.09
Fees and Compensation
(04/21/09)**

This section provides guidance to servicers on the fees and compensation under the HAMP process.

**Section 610.09.01
Servicing Fees (04/21/09)**

During the trial period, servicing fees will continue to be earned by the servicer to the extent that the borrower payments equal a contractual full

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payment. When the HAMP modification becomes effective, the servicer will receive servicing fees based on Fannie Mae's existing fee schedule for modified mortgage loans in accordance with *Section 602.02, Modifying Conventional Mortgage Loans (04/21/09)*.

Section 610.09.02
Late Fees (04/21/09)

All late charges, penalties, stop payment fees, or similar fees must be waived upon successful completion of the trial period.

Section 610.09.03
Administrative Costs
(11/02/09)

Servicers may not charge the borrower to cover the administrative processing costs incurred in connection with a HAMP. The servicer must pay any actual out-of-pocket expenses, such as any required notary fees, recordation fees, title costs, property valuation fees, credit report fees, or other allowable and documented expenses. Fannie Mae will reimburse the servicer for allowable out-of-pocket expenses. Servicers will not be reimbursed for the cost of the credit report(s).

To obtain reimbursement for any allowable administrative fees and costs incurred in connection with HAMP, the servicer should submit a *Cash Disbursement Request* ([Form 571](#)) to Fannie Mae. Only for mortgage loans considered under HAMP, Fannie Mae will waive the requirements that the claim equal a minimum amount of \$500.00 or that the mortgage loan be at least 6 months delinquent. Only administrative fees and costs associated with HAMP should be included on the [Form 571](#). In order for the administrative costs to be reimbursed, servicers must reference HAMP in the comments section on the [Form 571](#). If [Form 571](#) is submitted in hard copy, the servicer must write "HAMP" on the top of the form.

Section 610.09.04
Incentive Compensation
(04/21/09)

No incentives of any kind will be paid if (i) the servicer has not provided a [HAMP Registration Form](#) or HAMP loan setup data prior to the effective date of the modification, or (ii) the borrower's monthly payment ratio starts below 31 percent prior to the implementation of HAMP. The incentive compensation will only be paid for HAMP modifications that are based on the borrower's verified income. Each servicer must promptly apply or remit, as applicable, all borrower and investor compensation it receives with respect to any modified mortgage loan.

With respect to payment of any incentive that is predicated on at least a 6-percent reduction in the borrower's monthly mortgage payment, the reduction will be calculated by comparing the monthly mortgage payment used to determine eligibility (adjusted as applicable to include property

taxes, hazard insurance, flood insurance, condominium association fees, and homeowners' association fees) and the borrower's payment under HAMP.

Servicer Incentive Compensation

A servicer will receive compensation of \$1,000 for each completed modification under HAMP. In addition, if a borrower was current under the original mortgage loan, a servicer will receive an additional compensation amount of \$500. All such servicer incentive compensation shall be earned and payable once the borrower successfully completes the trial payment period.

If a borrower's monthly mortgage payment (principal, interest, taxes, and all related property insurance and homeowners' or condominium association fees, but excluding mortgage insurance) is reduced through HAMP by 6 percent or more, a servicer will also receive an annual "pay for success" fee equal to the lesser of: (i) \$1,000 (\$83.33 per month), or (ii) one-half of the reduction in the borrower's annualized monthly payment, for up to three years as long as the mortgage loan is a performing loan modification. The "pay for success" fee will be payable annually for each of the first three years after the anniversary of the month in which a trial period plan is effective. If and when the mortgage loan ceases to be in good standing, the servicer will cease to be eligible for any further incentive payment after that time, even if the borrower subsequently cures his or her delinquency. The servicer will forfeit any incentive payments that have accrued during the previous twelve months.

Borrower's Incentive Compensation

To provide an additional incentive for borrowers to keep their modified mortgage loan current, borrowers whose monthly mortgage payment (principal, interest, taxes, and all related property insurance and homeowners' or condominium association fees, but excluding mortgage insurance) is reduced through HAMP by 6 percent or more and who make timely monthly payments will earn an annual "pay for performance" principal balance reduction payment equal to the lesser of: (i) \$1,000 (\$83.33 per month), or (ii) one-half of the reduction in the borrower's annualized monthly payment for each month a timely payment is made. A borrower can earn the right to receive a "pay for performance" principal

balance reduction payment for payments made during the first five years following execution of the Agreement provided the mortgage loan continues to be in good standing as of the date the payment is made. The “pay for performance” principal balance reduction payment will accrue monthly and be applied annually for each of the five years in which this incentive payment accrues, prior to the first payment due date after the anniversary of the month in which the trial period plan is effective. This payment will be paid to the servicer to be applied first towards reducing the interest-bearing UPB and then towards any principal forbearance amount (if applicable) on the mortgage loan. Any applicable prepayment penalties on partial principal prepayments made by Fannie Mae must be waived. Borrower incentive payments do not accrue during the Trial Period; however, in the first month of the modification, the borrower will accrue incentive payments equal to the number of months in the trial period in addition to any accrual earned during the first month of the modification.

If and when the mortgage loan ceases to be in good standing (that is, three monthly payments are due under the modified mortgage loan and unpaid on the last day of the third month), the borrower will cease to be eligible for any further incentive payments after that time, even if the borrower subsequently cures his or her delinquency. The borrower will lose his or her right to any accrued incentive compensation when the mortgage loan ceases to be in good standing.

Borrower “pay for performance” principal balance reduction payments will accrue as long as the mortgage loan is current and the monthly payments are paid on time (the payment is made by the last day of the month in which the payment is due). For example, if the mortgage loan is current and the borrower makes 10 out of 12 payments on time, he or she will be credited for 10/12 of the annual incentive payment as long as the mortgage loan is in good standing at the time the annual “pay for performance” incentive is paid. A borrower whose mortgage loan is delinquent on a rolling 30- or 60-day basis will not accrue annual incentive payments.

Servicers must place the borrower incentives into an existing custodial account.

The IRS has ruled that the “pay for performance” principal balance reduction payments are excluded from gross income for tax reporting purposes.

Incentive Payment Process

Eligible incentives will be paid automatically based on information that is provided by the servicer through the HAMP servicer web portal and is, therefore, reliant on the servicers’ timely and accurate reporting of mortgage loan information. The incentive payments will be made via ACH to the bank account(s) designated by the servicer on the [HAMP Registration Form](#) during the HAMP registration process. The incentive payments will be paid on the 27th calendar day of each month (or, if the 27th falls on a non-business day, the preceding business day).

On the business day prior to the date payment is made, servicers will be able to obtain a detailed report of the incentive payments to be remitted by viewing the *Cash Payment Report by Servicer* (OBE.10) available on the reporting web portal at [HMPadmin.com](#). This report provides the total cash to be disbursed for each HAMP Registration Number, the aggregate for each HAMP Servicer Number associated with the HAMP Registration Number, and the loan level detail for each incentive type.

No incentives of any kind will be paid if the servicer has not executed the [Servicer Participation Agreement](#), [HAMP Registration Form](#), and/or reported loan information through the servicer web portal. This restriction includes incentives for any modification that becomes effective prior to the execution of the SPA even if the SPA is subsequently executed.

Section 610.10
FHA HOPE for
Homeowners (04/21/09)

Servicers will be required to consider a borrower for refinancing into the FHA HOPE for Homeowners program when feasible. Consideration for a HOPE for Homeowners refinance should not delay eligible borrowers from receiving a modification offer and beginning the trial period. Servicers must use the modification options to begin the HAMP modification and work to complete the HOPE for Homeowners refinance during the trial period. A servicer that is not a mortgage loan originator may counsel a borrower to seek a refinance with a HOPE for Homeowners lender.

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Exhibit 1: NPV Versioning Requirements (02/04/10)

Detailed versioning requirements are included in the Base NPV Model Documentation, which is available at HMPAdmin.com. These requirements include:

- Ensuring that the same major model version is used for repeat NPV tests as was used to qualify the borrower for a HAMP trial modification. For example:
 - If the borrower was qualified using any sub-version of a HAMP major model version on the portal, the borrower should be re-tested using at least the same HAMP major model version (and servicers are encouraged to re-test using the specific model release (for example 3.x) if possible). For borrowers initially tested on the portal, the portal automatically sorts borrowers into the appropriate model version based on the NPV Run Date.
 - If the borrower was tested on a proprietary model or a recoded version of the base model before September 1, 2009, the borrower should be re-tested using that proprietary model or recoded version. If that model is no longer operational and the servicer must use a different model for subsequent tests, any re-test results used for the decision must be adjusted so that the borrower is insulated, as much as is possible, from NPV changes resulting purely from differences in the models. Servicers who have implemented a proprietary NPV model or are operating a recoded version of the base model should refer to the version control guidance issued on October 16, 2009 by Treasury's Compliance Agent for further details regarding treatment of these loans.
- Ensuring that all NPV inputs remain constant when the borrower is retested, except (i) those that were found to be incorrect at the time of the initial NPV evaluation and (ii) inputs that have been updated based on the borrower's income documentation. Inputs that may be updated based on the borrower's documentation are limited to the following:
 - Association dues/fees before modification

- Monthly hazard and flood insurance
- Monthly real estate taxes
- Monthly gross income
- UPB after modification (interest-bearing UPB)
- Principal forbearance amount
- Interest rate after modification
- Amortization term after modification
- P&I payment after modification

Inputs that may not change regardless of their evolution since the trial's initiation include:

- UPB before modification
- Borrower FICO[®] and co-borrower FICO
- Property value
- Interest rate before modification
- Term before modification
- Monthly P&I payments before modification
- Months past due
- ARM reset rate and ARM reset date
- Data collection date
- Imminent default status
- NPV run date

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- Advances/escrow
- Discount rate risk premium (spread of discount rate over PMMS rate)
- Servicers who have implemented a proprietary NPV model or are operating a recoded version of the base model must ensure that all economic inputs remain constant from the first to subsequent tests. Inputs that should be held constant include the PMMS rate and all quarterly input tables.

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Exhibit 2

Exhibit 2: Model Clauses for Borrower Notices (12/14/09)

The model clauses in this exhibit provide sample language that may be used to communicate the status of a borrower's request for a Home Affordable Modification. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the requirements of the program.

Non Approval Notice

1. **Ineligible Mortgage Loan.** We are unable to offer you a Home Affordable Modification because your mortgage loan did not meet one or more of the basic eligibility criteria of the Home Affordable Modification Program.

☐ You did not obtain your mortgage loan on or before January 1, 2009.

☐ Your loan with us is not a first lien mortgage.

☐ The current unpaid principal balance on your mortgage loan is higher than the program limit. (\$729,750 for a one unit property, \$934,200 for a two unit property, \$1,129,250 for a three unit property and \$1,403,400 for a four unit property).
2. **Ineligible Borrower.** We are unable to offer you a Home Affordable Modification because your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan plus property taxes, hazard insurance, and homeowner's dues (if any) is less than or equal to 31 percent of your gross monthly income (your income before taxes and other deductions) which, (*select one*) [you told us is \$_____] OR [we verified as \$_____]. Your housing expense must be greater than 31 percent of your gross monthly income to be eligible for a Home Affordable Modification. If you believe this verified income is incorrect, please contact us at the number provided below.
3. **Property Not Owner Occupied.** We are unable to offer you a Home Affordable Modification because you do not live in the property as your primary residence.
4. **Ineligible Property.** We are unable to offer a Home Affordable Modification because your property:

☐ Is vacant

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☐ Has been condemned.☐ Has more than four dwelling units.

5. **Investor Guarantor Not Participating.** We are unable to offer you a Home Affordable Modification because:

☐ We service your mortgage loan on behalf of an investor or group of investors that has not given us the contractual authority to modify your mortgage loan under the Home Affordable Modification Program.☐ Your mortgage loan is insured by a private mortgage insurance company that has not approved a modification under the Home Affordable Modification Program.☐ Your mortgage loan is guaranteed and the guarantor has not approved a modification under the Home Affordable Modification Program.

6. **Bankruptcy Court Declined.** We are unable to offer you a Home Affordable Modification because you have filed for bankruptcy protection, and the proposed modified mortgage loan terms were not approved by the Bankruptcy Court. You may wish to contact your bankruptcy counsel or trustee to discuss this decision.

7. **Negative NPV.** The Home Affordable Modification Program requires a calculation of the net present value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your mortgage loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your mortgage loan is likely to receive if the mortgage loan is modified and the investor's cash flow if the mortgage loan is not modified. Based on the NPV results, the owner of your mortgage loan has not approved a modification.

If we receive a request from you within 30 calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If within 30 calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your mortgage loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

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Available NPV Inputs

- a. Unpaid balance on the original mortgage loan as of [Data Collection Date]
 - b. Interest rate before modification as of [Data Collection Date].
 - c. Months delinquent as of [Data Collection Date]
 - d. Next ARM reset date (if applicable)
 - e. Next ARM reset rate (if applicable)
 - f. Principal and interest payment before modification
 - g. Monthly insurance payment
 - h. Monthly real estate taxes
 - i. Monthly HOA fees (if applicable)
 - j. Monthly gross income
 - k. Borrower's Total Monthly Obligations
 - l. Borrower FICO
 - m. Co-borrower FICO (if applicable)
 - n. Zip Code
 - o. State
8. **Default Not Imminent.** We are unable to offer you a Home Affordable Modification because you are current on your mortgage loan and, after reviewing the financial information you provided us, we have determined that you are not at risk of default because:
- ☐ You have not documented a financial hardship that has reduced your income or increased your expenses, thereby impacting your ability to pay your mortgage loan as agreed.
- ☐ You have sufficient net income to pay your current mortgage payment.
- ☐ You have the ability to pay your current mortgage payment using cash reserves or other assets.
9. **Excessive Forbearance.** We are unable to offer you a Home Affordable Modification because we are unable to create an affordable payment equal to 31 percent of your reported monthly gross income without changing the terms of your mortgage loan beyond the requirements of the program.
10. **Previous HAMP Modification.** We are unable to offer you a Home Affordable Modification because your mortgage loan was previously modified under the Home Affordable Modification Program. The program does not allow more than one modification.

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11. **Request Incomplete.** We are unable to offer you a Home Affordable Modification because you did not provide us with the documents we requested. A notice which listed the specific documents we needed and the time frame required to provide them was sent to you more than 30 days ago.
12. **Trial Plan Default.** We are unable to offer you a Home Affordable Modification because you did not make all of the required trial period plan payments by the end of the trial period.

Loan Paid Off or Reinstated. We are not considering your request for a modification because:

- ☐ Your mortgage loan was paid in full on _____.
- ☐ Your mortgage loan was reinstated on _____ and you no longer appear to be in need of modification. If you feel that you are at risk of default, please contact us to discuss your eligibility and qualification for a Home Affordable Modification.

Offer Not Accepted by Borrower / Request Withdrawn. We are not considering your request for a modification because:

- ☐ After being offered a trial period plan or Home Affordable Modification you notified us on _____ that you did not wish to accept the offer.
- ☐ After initially asking to be considered for a Home Affordable Modification you withdrew that request on _____.

Incomplete Information Notice. We cannot continue to review your request for a Home Affordable Modification because:

- ☐ You are currently in a trial period plan, however you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert expiration date of trial period plan, but no less than 30 days from the date of the letter] we will terminate your trial period plan and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents]
- ☐ You have requested consideration for a trial period plan, however, you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert date no less than 30 days from the date of the letter], we will consider that you have withdrawn your request for a modification and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents.]

Chapter 7. Delinquency Status Reporting (03/01/08)

To improve Fannie Mae's management of foreclosure prevention activity, Fannie Mae requires a servicer to advise Fannie Mae of the action taken to resolve a delinquency, the effective date of the action taken, and the reason for the default. Each month, a servicer must electronically transmit a file extract of its delinquent mortgage loans to Fannie Mae, which Fannie Mae will then use to update its delinquency tracking system. This system maintains delinquency status information for all portfolio mortgage loans (regardless of the remittance type or Fannie Mae's ownership interest) and for all MBS mortgage loans (regardless of the servicing option under which they are serviced).

Fannie Mae requires a servicer of portfolio mortgage loans and special servicing option MBS mortgage loans (including those for which the servicer and Fannie Mae share in the foreclosure risk) to decide on a course of action for resolving a delinquency or liquidating a mortgage loan as soon as possible. Following the 30th day of delinquency, the servicer must advise Fannie Mae of the action it plans to take (or has taken) by reporting the appropriate delinquency status code, the default effective date of the delinquency status being reported, and the "reason for delinquency" code as part of its next scheduled delinquency status report. Servicers are also required to report delinquency status information on any regular servicing option MBS mortgage loan that was one or more full payments (30 or more days) past due as of the last day of the preceding month until the mortgage loan becomes current.

Section 701 Delinquency Status and "Reason for Delinquency" Codes (06/01/07)

A servicer must report the specific delinquency status code that best describes the latest action it has taken to cure a delinquency or, if that failed, to liquidate the mortgage loan. Delinquency status codes are available to describe a full range of actions—such as the granting of relief provisions or some other form of foreclosure prevention; referring a mortgage loan for foreclosure, deed-in-lieu of foreclosure, or assignment; filing for bankruptcy; charging off a debt; etc. Only one delinquency status code can be reported for an individual mortgage loan in any given month, although over the course of a delinquency various different codes could apply. The reporting of a specific delinquency status code does not relieve the servicer of the need to satisfy other requirements Fannie Mae has regarding providing its Servicing Consultant, Portfolio Manager, or Fannie

Mae's National Servicing Organization's Servicing Solutions Center at (888) 326-6435 with advance notice about a given action or requesting Fannie Mae's prior approval before it takes a particular action. Descriptions of the available delinquency status codes appear in *Exhibit 1: Delinquency Status Codes*.

A servicer must report the specific "reason for delinquency" code that best describes the primary reason for a delinquency. "Reason for delinquency" codes are available for a full range of conditions that might cause a borrower to become delinquent—such as death or illness, marital difficulties, curtailment of income, excessive obligations, unemployment, inability to sell or rent a property, etc. Several different "reason for delinquency" codes could apply to an individual mortgage loan; however, the servicer must report the one that appears to be the primary reason for the borrower's failure to make his or her mortgage payments. Descriptions of the available "reason for delinquency" codes appear in *Exhibit 2: "Reason for Delinquency" Codes*.

Servicers must also report to Fannie Mae the effective date of the delinquency status that is being reported to Fannie Mae (i.e., the month in which mortgage loan payments first become subject to a forbearance or repayment plan or the month in which the borrower files a bankruptcy action, etc.). Beginning with the September 2007 reporting month, a servicer is required to report the effective date on all new delinquency status codes reported to Fannie Mae.

**Section 702
Reporting Monthly
Mortgage Loan Status
(05/01/09)**

By the second business day of each month, a servicer must advise Fannie Mae about the delinquency status of the mortgage loans it is servicing for Fannie Mae by electronically transmitting a delinquency status code, the effective date of the delinquency status being reported, the completion date of the delinquency status being reported, if applicable, and a "reason for delinquency" code (collectively referred to as delinquency status information) for any mortgage loan that falls into the following categories:

- any mortgage loan that was 30 or more days delinquent as of the last day of the preceding month; and
- any mortgage loan for which an action was taken to cure the delinquency (such as granting forbearance, agreeing to a loan modification, filing for bankruptcy, etc.) during the preceding month,

even though the mortgage loan was fewer than three months delinquent.

When none of the delinquency status information has changed for a previously reported mortgage loan, the servicer must, nevertheless, re-transmit the same delinquency status information that it previously reported for the mortgage loan. On the other hand, if any of the delinquency status information has changed for a previously reported mortgage loan, the servicer must report the delinquency status information. (The servicer will need to report the delinquency status code, the effective date of the delinquency status being reported, the completion date of the delinquency status being reported, if applicable, and the “reason for delinquency” code even if only one of them has changed.)

When a delinquency status code no longer applies for a mortgage loan because the mortgage loan has been reinstated (and the servicer reported a current last paid installment date through Fannie Mae’s investor reporting system) or because the mortgage loan has been liquidated (and the servicer reported a liquidation action code through Fannie Mae’s investor reporting system), the servicer will no longer need to report delinquency status information to Fannie Mae since Fannie Mae will no longer be using the delinquency tracking system to monitor the status of the mortgage loan.

On approximately the third calendar day of each month thereafter, Fannie Mae will provide a delinquency status and reason for delinquency status codes exception report. This report will provide information on invalid and illogical reporting of delinquency status and reason codes. There will be a summary report and a detail report. The summary report will summarize the types of exceptions for a particular servicer. The detail report will provide the loan level details for the various exceptions. A servicer must use the report to provide the correct delinquency status and reason codes. Corrections must be made through HSSN and must be made by the 10th calendar day of the month in which the exception report was issued. Fannie Mae will provide an updated final exception report on the 11th calendar day of the month as well as a summary of what was reported during the month. The servicer must use these reports to facilitate reconciliation to the information on its systems.

Fannie Mae’s foreclosure prevention reporting system, HSSN, must be utilized to submit delinquency and foreclosure prevention information to

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Fannie Mae. Accurate and timely data entry of delinquency status codes in HSSN enables both servicers and Fannie Mae to communicate more effectively on all mortgage loans that are in various stages of foreclosure prevention. HSSN provides reporting that allows servicers to view delinquency exceptions, statistics, and loan-level case status.

**Section 703
Transmitting Status
Information (07/01/09)**

A servicer may select any of three different methods for transmitting delinquency status information to Fannie Mae—transmission through HSSN; transmission through CPU-to-CPU, using Advantis; or transmission through CPU-to-CPU, using a service bureau. The record layout for the servicer's delinquent loan file extract will be the same regardless of the transmission method it chooses.

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Exhibit 1

Exhibit 1: Delinquency Status Codes (06/16/08)

Each of the following delinquency status codes can be applied to a given mortgage loan at any point in the delinquency process. They are not always mutually exclusive; however, the servicer must report only one code—the one that represents the latest action or stage of a specific action—for a mortgage loan in each reporting cycle.

Code		Description
09	Forbearance	Use this code to indicate that the servicer has authorized a temporary suspension of payments or has agreed to accept periodic payments of less than the borrower's scheduled monthly payment, periodic payments at different intervals, etc., to give the borrower additional time and a means for bringing the mortgage loan current by repaying all delinquent installments.
12	Repayment Plan	Use this code to indicate that the servicer has an agreement with the borrower for the acceptance of regularly scheduled monthly mortgage payments plus an additional amount over a prescribed number of months to bring the mortgage loan current.
17	Preforeclosure Sale	Use this code to indicate that the servicer plans to pursue a preforeclosure sale (a payoff of less than the full amount of Fannie Mae's indebtedness) to avoid the expenses of foreclosure proceedings.
19	Partial Reinstatement	Use this code to indicate that the servicer is working with the borrower to facilitate a HomeSaver Advance in order to avoid foreclosure.
24	Drug Seizure	Use this code to indicate that the Department of Justice (or any other state or federal agency) has decided to seize (or has seized) a property under the forfeiture provision of the Controlled Substances Act.
26	Refinance	Use this code to indicate that the servicer is aware that the borrower is pursuing an arrangement whereby the existing first-lien mortgage loan will be refinanced (paid off).
27	Assumption	Use this code to indicate that the servicer is working with the borrower to sell the property by permitting the purchaser to pay the delinquent installments and assume the outstanding debt in order to avoid a foreclosure.

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Code		Description
28	Modification	Use this code to indicate that the servicer is working with the borrower to renegotiate the terms of the mortgage loan in order to avoid foreclosure.
29	Charge-off	Use this code to indicate that Fannie Mae has agreed that it is not in its best interests to pursue collection efforts or legal actions against the borrower (because of a reduced value for the property, a low outstanding mortgage loan balance, or the presence of certain environmental hazards on the property).
30	Third-Party Sale	Use this code to indicate that a successful third-party bidder was awarded the property at the foreclosure sale.
31	Probate	Use this code to indicate that the servicer cannot pursue (or complete) foreclosure action because proceedings relating to a deceased borrower's estate are in process.
32	Military Indulgence	Use this code to indicate that the servicer has granted a delinquent service member forbearance or foreclosure proceedings have been stayed under the provisions of the Servicemembers' Civil Relief Act or any similar state law.
42	Delinquent, No Action	Use this code to indicate that the mortgage loan is 30+ days delinquent, but the servicer has not taken legal action or initiated foreclosure prevention.
43	Foreclosure	Use this code to indicate that the servicer has referred the case to an attorney (or trustee) to take legal action to acquire the property through a foreclosure sale.
44	Deed-in-Lieu of Foreclosure	Use this code to indicate that Fannie Mae authorized the servicer to accept a voluntary conveyance of the property instead of acquiring the property through foreclosure proceedings.
49	Assignment	Use this code to indicate that a mortgage loan is in the process of being assigned to the insurer or guarantor.
59	Chapter 12 Bankruptcy	Use this code to indicate that the borrower has filed for bankruptcy under Chapter 12 of the U.S. Bankruptcy Code.
61	Second Lien Considerations	Use this code for a second-lien mortgage loan to indicate that the servicer is evaluating the advantages and disadvantages of pursuing a foreclosure action or recommending that the debt be charged off.

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Code		Description
62	Veterans Affairs— “No-Bid”	Use this code to indicate that the Department of Veterans Affairs refused to establish an “upset price” to be bid at the foreclosure sale for a VA-guaranteed mortgage loan that the servicer had referred for foreclosure.
63	Veterans Affairs—Refund	Use this code to indicate that the Department of Veterans Affairs has requested information about a VA-guaranteed mortgage loan the servicer referred for foreclosure, in order to reach a decision about whether to accept an assignment for purposes of refunding the mortgage loan to avoid foreclosure.
64	Veterans Affairs— Buydown	Use this code to indicate that Fannie Mae has agreed to make a cash contribution to reduce the outstanding indebtedness of a VA-guaranteed mortgage loan for which the Department of Veterans Affairs failed to establish an “upset price” bid for the foreclosure sale, in order to get the VA to reconsider its decision about establishing an “upset price.”
65	Chapter 7 Bankruptcy	Use this code to indicate that the borrower has filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.
66	Chapter 11 Bankruptcy	Use this code to indicate that the borrower has filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code.
67	Chapter 13 Bankruptcy	Use this code to indicate that the borrower has filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.

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Delinquency Status Reporting

Exhibit 1

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Exhibit 2

Exhibit 2: “Reason for Delinquency” Codes (01/31/03)

There may be multiple reasons for any given delinquency. However, the servicer must report the code that most specifically describes the circumstance that appears to be the primary contributing factor to the delinquency.

Code		Description
001	Death of Principal Borrower	Use this code to indicate that the delinquency is attributable to the death of the principal borrower.
002	Illness of Principal Borrower	Use this code to indicate that the delinquency is attributable to a prolonged illness that keeps the principal borrower from working and generating income.
003	Illness of Borrower’s Family Member	Use this code to indicate that the delinquency is attributable to the principal borrower’s having incurred extraordinary expenses as the result of the illness of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower’s illness).
004	Death of Borrower’s Family Member	Use this code to indicate that the delinquency is attributable to the principal borrower’s having incurred extraordinary expenses as the result of the death of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower’s death).
005	Marital Difficulties	Use this code to indicate that the delinquency is attributable to problems associated with a separation or divorce, such as a dispute over ownership of the property, a decision not to make payments until the divorce settlement is finalized, a reduction in the income available to repay the mortgage debt, etc.
006	Curtailement of Income	Use this code to indicate that the delinquency is attributable to a reduction in the borrower’s income, such as a garnishment of wages, a change to a lower paying job, reduced commissions or overtime pay, loss of a part-time job, etc.
007	Excessive Obligations	Use this code to indicate that the delinquency is attributable to the borrower’s having incurred excessive debts (either in a single instance or as a matter of habit) that prevent him or her from making payments on both those debts and the mortgage debt.

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Code		Description
008	Abandonment of Property	Use this code to indicate that the delinquency is attributable to the borrower's having abandoned the property for reason(s) that are not known by the servicer (because the servicer has not been able to locate the borrower).
009	Distant Employment Transfer	Use this code to indicate that the delinquency is attributable to the principal borrower's being transferred or relocated to a distant job location and incurring additional expenses for moving and housing in the new location, which affects his or her ability to pay both those expenses and the mortgage debt.
011	Property Problem	Use this code to indicate that the delinquency is attributable to the condition of the improvements or the property (substandard construction, expensive and extensive repairs needed, subsidence of sinkholes on property, impaired rights of ingress and egress, etc.) or the borrower's dissatisfaction with the property or the neighborhood.
012	Inability to Sell Property	Use this code to indicate that the delinquency is attributable to the borrower's having difficulty in selling the property.
013	Inability to Rent Property	Use this code to indicate that the delinquency is attributable to the borrower's needing rental income to make the mortgage payments and having difficulty in finding a tenant for a one-unit investment property or for one or more of the units in a one- to four-unit property.
014	Military Service	Use this code to indicate that the delinquency is attributable to the principal borrower's having entered active duty status and his or her military pay not being sufficient to enable the continued payment of the existing mortgage debt.
015	Other	Use this code to indicate that the delinquency is attributable to reasons that are not otherwise included in this list of applicable codes.
016	Unemployment	Use this code to indicate that the delinquency is attributable to a reduction in income resulting from the principal borrower's having lost his or her job.
017	Business Failure	Use this code to indicate that the delinquency is attributable to a self-employed principal borrower's having a reduction in income and/or excessive obligations that are the direct result of the failure of his or her business to remain a viable entity or, at least, to generate sufficient profit that the borrower can rely on to meet his or her personal obligations.

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Exhibit 2

Code		Description
019	Casualty Loss	Use this code to indicate that the delinquency is attributable to the borrower's having incurred a sudden, unexpected property loss as the result of an accident, fire, storm, theft, earthquake, etc.
022	Energy-Environment Costs	Use this code to indicate that the delinquency is attributable to the borrower's having incurred excessive energy-related costs or costs associated with the removal of environmental hazards in, on, or near the property.
023	Servicing Problems	Use this code to indicate that the delinquency is attributable to the borrower's being dissatisfied with the way the servicer is servicing the mortgage loan or with the fact that servicing of the mortgage loan has been transferred to a new servicer.
026	Payment Adjustment	Use this code to indicate that the delinquency is attributable to the borrower's being unable to make a new payment that resulted from an increase related to a scheduled payment change for a graduated-payment or adjustable-rate mortgage loan; increased monthly escrow accruals that are needed to pay higher taxes, insurance premiums, or special assessments; or the spreading of the amount needed to repay an escrow shortage over the next year.
027	Payment Dispute	Use this code to indicate that the delinquency is attributable to a disagreement between the borrower and the servicer about the amount of the mortgage payment, the acceptance of a partial payment, or the application of previous payments that results in the borrower's refusal to make the payment(s) until the dispute is resolved.
029	Transfer of Ownership Pending	Use this code to indicate that the delinquency is attributable to the borrower's having agreed to sell the property and deciding not to make any additional payments.
030	Fraud	Use this code to indicate that the delinquency is attributable to a legal dispute arising out of a fraudulent or illegal action that occurred in connection with the origination of the mortgage loan (or later).
031	Unable to Contact Borrower	Use this code to indicate that the reason for the delinquency cannot be ascertained because the borrower cannot be located or has not responded to the servicer's inquiries.
INC	Incarceration	Use this code to indicate that the delinquency is attributable to the principal borrower's having been jailed or imprisoned (regardless of whether he or she is still incarcerated).

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Exhibit 3: Delinquency Status Code File Layout (06/01/10)

	Data Element	Position	Format	Required Field	Definition
1	Servicer Number	1	9 N / 9(9)	Yes	Fannie Mae assigned lender number
2	Space	10	X(1)	Yes	
3	Fannie Mae Loan Number	11	10 AN / 9(10)	Yes	10-digit unique Fannie Mae assigned loan number for Fannie Mae loans
4	Space	21	X(1)	Yes	
5	Status Code	22	2 AN / X(2)	Yes	The latest action or stage of a specific action for a mortgage in each reporting cycle
6	Space	24	X(1)	Yes	
7	Delinquency Reason Code	25	3 AN / X(3)	Yes	Describes the circumstance that appears to be the primary contributing factor to the delinquency
8	Space	28	X(1)	Yes	
9	Default Effective Date	29	8 N / 9(8)	Required for reporting HSF, PRP, regular forbearance, and repayment plans	Date that the delinquency status code becomes effective
10	Space	37	X(1)	Yes	
11	Default Completion Date	38	8 N / 9(8)	Required for reporting HSF, PRP, regular forbearance, and repayment plans	Date that the delinquency status was completed
12	Space	46	X(1)	Yes	
13	HomeSaver Forbearance Indicator	47	1 N / X(1)	Required for reporting HSF/PRP	Indicates what type of forbearance plan the borrower is on. Expected Value: 0 (Regular Forbearance) or 1 (HSF) or 2 (PRP) or Space
14	Space	48	X(1)	Yes	

**Foreclosures,
Conveyances and
Claims, and Acquired
Properties**

**Delinquency Status
Reporting**

Exhibit 3

	Data Element	Position	Format	Required Field	Definition
15	Imminent Default Indicator	49	1 N / X(1)	Required for reporting HSF/PRP	Indicates that the loan has been placed in forbearance (HSF/PRP) because the borrower has been determined to be in imminent default Expected Value: 1 (YES) or 0 (NO) or Space
16	Space	50	X(1)	Yes	
17	Forbearance Payment Amount	51	11 N / 9(8).99	Required for reporting HSF/PRP	Payment amount of the Forbearance Plan (HSF/PRP). The Forbearance Payment Amount is the Forbearance plan amount NOT the actual amount received. If the value is short of length, prefix with zeros and suffix with zeros after decimal
18	Space	62	X(1)	Yes	
19	Forbearance Payment Date	63	8 AN / X(1)	Required for reporting HSF/PRP	Date the forbearance (HSF/PRP) payment was received during the last reporting month
20	Space	71	X(1)	Yes	
21	Ninety Plus New Layout Indicator	72	4 AN / X(4)	Required for reporting HSF/PRP	Indicates that the new file layout is being used for reporting the HSF or PRP. If this field is blank, then the four fields above will be ignored HSFR indicator must be provided if the transaction is for an HSF or PRP case Expected Value: HSFR or Space
22	Space	76	X(5)	Yes	

This *Part*—Foreclosures, Conveyances and Claims, and Acquired Properties—describes Fannie Mae’s requirements and procedures for conducting foreclosure proceedings, conveying properties to the insurer or guarantor, filing claims under the insurance or guaranty contract, and disposing of acquired properties that Fannie Mae holds for sale. It does not address any special requirements that may have been imposed under the terms of a negotiated purchase transaction. The servicer is responsible for taking all steps necessary to ensure that the terms of a negotiated contract are followed.

Insofar as possible, Fannie Mae sets out those instances when its requirements vary for a particular lien type, amortization method, remittance type, servicing option, mortgage loan type, or ownership interest. Absent any restrictive language, the servicer may assume that the same procedure or requirement applies for all mortgage loans Fannie Mae has purchased or securitized as standard transactions. However, most of the material in this *Part* will **not** apply to MBS mortgage loans serviced under the regular servicing option. Much of the information represents generally accepted procedures for conducting the foreclosure and claim processes, so the servicer of a regular servicing option MBS mortgage loan may find it of some benefit. From time to time, Fannie Mae may address the need for a regular servicing option MBS mortgage loan to be handled in a manner that differs from the one that applies to most mortgage loans serviced for Fannie Mae. Under no circumstances should a servicer of a regular servicing option MBS mortgage loan interpret the content of this *Part* as relieving it of its responsibilities and obligations for conducting the foreclosure proceedings and disposing of the acquired property (including the absorption of all costs and any related losses).

This *Part* consists of three chapters:

- *Chapter 1*—Foreclosures—discusses procedures for initiating foreclosure proceedings, processing subsequent reinstatements, referring a case to an attorney (or trustee), notifying interested parties about the foreclosure or property acquisition, and performing various procedural requirements related to the foreclosure.
- *Chapter 2*—Conveyances and Claims—describes the procedures for conveying a foreclosed property, filing claims with the mortgage insurer or guarantor, and notifying Fannie Mae about the actions taken.

- *Chapter 3—Acquired Properties*—discusses the servicer's responsibilities for submitting underwriting or servicing review files for a mortgage loan secured by a property that will soon be acquired, explains the specific responsibilities of the servicer and any broker, agent, or property management company Fannie Mae designates to perform property management functions for an acquired property, provides procedures for obtaining reimbursement of expenses incurred in fulfilling those responsibilities, and discusses the need for filing IRS information returns related to expenses paid for acquired properties.

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Chapter 1. Foreclosures (10/31/08)

Whenever a borrower shows a disregard for the mortgage loan obligation or is unable to make the mortgage payments, the servicer of a whole mortgage loan or a participation pool mortgage loan that Fannie Mae holds in its portfolio, or of an MBS mortgage loan serviced under the special servicing option, must protect Fannie Mae's investment by taking prudent action. The servicer must make every reasonable effort to conduct a personal face-to-face interview with the borrower and to cure the delinquency through Fannie Mae's special relief provisions or foreclosure prevention alternatives before referring a mortgage loan to the foreclosure attorney (or trustee). The servicer also must have inspected the property and analyzed the individual circumstances of the delinquency.

The servicer must be particularly diligent in investigating mortgage loans originated as investor properties and attempt to determine whether or not the borrower is collecting rental income from the property. If the servicer suspects that the property (or any unit(s) of the property) is tenant occupied, it must take appropriate action to ascertain the actual occupancy status of the property (including detailed property inspections, conducting a skip trace, etc.). The servicer is responsible for promptly notifying its attorney (or trustee) of any change in mortgage loan status (this includes occupancy status, rental income and amounts, tenant and/or lease information, etc.).

A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have. To ensure that this is done, the servicer must have appropriate policies, procedures, and controls to ensure compliance with Fannie Mae's requirements. Although Fannie Mae does not specify a particular monitoring system, it may review the servicer's system for adequacy on occasion. The servicer is fully responsible for any losses that occur because it mishandled the case.

If a servicer services first-lien mortgage loans owned or securitized by Fannie Mae and also services subordinate-lien mortgage loans for itself or other investors, and that servicer must initiate a foreclosure action against the property for a mortgage loan owned or securitized by Fannie Mae, the servicer must follow Fannie Mae's foreclosure guidelines and process the foreclosure in a timely manner. A servicer should not consider the status of or impact on any subordinate liens that the servicer is servicing for itself or other investors when evaluating or proceeding with a foreclosure action. However, a servicer which also services a subordinate-lien mortgage loan may file the foreclosure of the first-lien mortgage loan in Fannie Mae's name in order to avoid having to "sue itself" in the foreclosure action.

Unless subject to the Fannie Mae automatic reclassification process, Fannie Mae requires that servicers foreclose while mortgage loans are in the MBS trust. In addition, a servicer must purchase a regular servicing option MBS mortgage loan from the MBS pool within 60 days after the foreclosure sale date.

Additionally, unless otherwise directed by Fannie Mae, a special servicing option MBS mortgage loan that has been foreclosed must be removed from the MBS pool no later than the remittance date following the date on which the liquidation action code was reported to Fannie Mae.

When an instrument of record relating to a single-family property requires the use of an address for Fannie Mae, including assignments of mortgages, foreclosure deeds, REO deeds, and lien releases, the following address must be used: Fannie Mae, P.O. Box 650043, Dallas, TX 75265-0043. If a street address is required, the following address must be used: Fannie Mae, 14221 Dallas Parkway, Suite 1000, Dallas, TX 75254.

**Section 101
Routine vs. Nonroutine
Litigation (10/01/08)**

A servicer generally should not initiate routine legal proceedings in Fannie Mae's name, but in instances where it is appropriate or necessary to do so, Fannie Mae must be described in the legal proceedings as "Federal National Mortgage Association (Fannie Mae), a corporation organized and existing under the laws of the United States." The servicer, its legal counsel, and foreclosure attorneys (or trustees) should not forward papers, pleadings, and notices related to routine uncontested legal actions to Fannie Mae. If any routine legal proceeding becomes contested (e.g., the defendant in any proceeding files any appeal, motion for rehearing, or

similar procedure) or a servicer receives notice of a nonroutine action that involves a Fannie Mae–owned or Fannie Mae–securitized mortgage loan or that will otherwise affect Fannie Mae’s interests—regardless of whether Fannie Mae is also named as a party to the action—the servicer must immediately contact Fannie Mae’s Regional Counsel via e-mail to nonroutine_litigation@fanniemae.com.

A servicer may not initiate or defend nonroutine litigation on Fannie Mae’s behalf unless it obtains prior written consent from its Fannie Mae Regional Counsel via email to nonroutine_litigation@fanniemae.com. This will enable Fannie Mae to concur in the necessity for the action, the selection of legal counsel, development of legal strategy, and approval of legal fees and costs. One example of a nonroutine legal action is a case in which the servicer’s legal counsel wants to pursue a judicial foreclosure in order to clear technical defects even though the security property is located in a state in which the usual method of foreclosure is by non-judicial foreclosure. In this situation, the servicer should not commence a judicial foreclosure for a conventional mortgage loan without first clearing the action with Fannie Mae. Nonroutine litigation also includes any claim, counterclaim, or procedure that: challenges methods in which Fannie Mae does business; involves Fannie Mae’s status as a federal instrumentality; requires interpretation of Fannie Mae’s Charter, such as removal to federal court based on Fannie Mae’s Charter; claims punitive damages from Fannie Mae; or asserts liability against Fannie Mae based on actions of its servicers. Additional examples include “show cause orders” or proceedings and motions for sanctions.

Section 102
Initiation of Foreclosure
Proceedings (10/01/08)

Generally, foreclosure proceedings for a first mortgage loan must begin 30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met.

Servicers must expedite foreclosure proceedings to the greatest extent allowable under applicable law (without exploring all foreclosure prevention options) if the borrower is not eligible for relief from foreclosure under the Servicemembers Civil Relief Act (or any state law that similarly restricts the right to foreclose) and the property has been abandoned or vacated by the borrower and it is apparent that the borrower does not intend to make the mortgage payments. In addition, servicers must expedite foreclosure proceedings for any mortgage loan if:

- the borrower was advised in writing of available foreclosure prevention options and his or her written response indicated a lack of interest in the mortgage loan obligation (or gave permission for the commencement of foreclosure proceedings, if the borrower was subject to the provisions of the Servicemembers Civil Relief Act or any state law that similarly restricts the right to foreclose); or
- income from rental of the property is not being applied to the mortgage payments and arrangements cannot be made to apply it, and it has been established that the borrower is not eligible for relief under the Servicemembers Civil Relief Act or any state law that similarly restricts the right to foreclose. (also see *Part III, Chapter 1, Exhibit 1*)

Fannie Mae requires a servicer to contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 before it initiates foreclosure proceedings for an eMortgage.

Foreclosure proceedings for a second mortgage loan can begin when at least two full monthly installments are past due. As long as the servicer has complied with the requirements of the Servicemembers Civil Relief Act and any state law that restricts the right to foreclose, it can start foreclosure proceedings for a second mortgage loan immediately if the first mortgage loan is in default and the second mortgage instrument includes a provision that the second mortgage loan will be considered in default, regardless of the status of its payments, if the first mortgage loan is in default.

In most cases, a servicer will have a copy of the mortgage note that it can use to begin the foreclosure process. However, some jurisdictions require that the servicer produce the original note before or shortly after initiating foreclosure proceedings. If Fannie Mae possesses the note through its designated document custodian, to obtain the note and any other custody documents that are needed, the servicer must submit a request to the designated document custodian's electronic release system. If Fannie Mae possesses the note through a third-party document custodian designated by the servicer that has custody of those documents for Fannie Mae, to obtain the note and any other custody documents that are needed, the servicer must submit a *Request for Release/Return of Documents* ([Form 2009](#)) to Fannie Mae's document custodian. In either case, the servicer must

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specify whether the original note is required or whether the request is for a copy.

**Section 102.01
Effect of Servicemembers
Civil Relief Act (10/31/08)**

The Housing and Economic Recovery Act of 2008 made both temporary and permanent changes to the Servicemembers Civil Relief Act. The law requires a stay of foreclosure or other legal proceedings on eligible mortgage loans for a period of nine months following the termination of a servicemember's active duty. These changes are effective through December 31, 2010. After December 31, 2010, servicers are required to limit the granting of the stay of foreclosure or other legal proceedings to a maximum of 90 days after termination of active duty, unless otherwise required by governing law at the time.

In order to facilitate servicers taking appropriate action in cases where military indulgence is warranted or required, *Part III, Chapter 1, Exhibit 1* provides a consolidated presentation of all the relevant material to Fannie Mae's specific procedures for providing relief to U.S. service members under the Servicemembers Civil Relief Act, and Fannie Mae's additional forbearance policies.

**Section 102.02
Effect of Environmental
Hazards (01/31/03)**

A servicer should not begin foreclosure proceedings for any mortgage loan if it becomes aware of environmental hazards that affect the security property. Instead, it must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438. When a servicer learns about the issuance of a lead-based paint citation, obtains other evidence of lead-based paint law violations, or becomes aware of threatened or pending lead-based paint litigation related to a mortgage loan which it intends to refer for foreclosure, the servicer must provide the following information to its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 within 30 days after the mortgage loan is referred for foreclosure. If the security property is a one-unit investment property or a two- to four-unit property:

- the current value of the property (based on, at least, an exterior inspection of the property and, if the borrower is cooperative, on an interior inspection);
- the amount of Fannie Mae's outstanding debt;

- the number of children under eight years of age that are residing in the property (if any), giving the exact age of each such child and, in the event the property is a two- to four-unit property, the unit the child is occupying; and
- a copy of any documentation it has obtained related to lead-based paint law violations (including actual lead-based paint citations) or threatened or pending lead-based paint litigation.

If Fannie Mae is named as a party in any environmental litigation, the litigation must be considered nonroutine and the servicer must immediately notify its Fannie Mae Regional Counsel via email to nonroutine_litigation@fanniemae.com.

When the security property is located in Massachusetts, the servicer must conduct an actual search to determine whether there are any outstanding lead-based paint citations against the property or the property owner just before it decides to refer a mortgage loan for foreclosure. If, during this search, the servicer discovers that a lead-based paint citation has been issued, it must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 immediately so Fannie Mae can evaluate the details of the specific case and advise the servicer of the action it wants taken (including postponement of the foreclosure sale, if necessary). If Fannie Mae advises the servicer to proceed with the foreclosure action, the servicer must conduct another search immediately before the foreclosure sale is held to ensure that no additional citations were issued against the property subsequent to its earlier search. For the most part, Fannie Mae expects that a lead-based paint citation search will involve simply making a telephone call to the appropriate oversight authority (such as the local housing court, department of health, etc.). However, in instances in which a citation search becomes more complex, Fannie Mae will reimburse the servicer for the actual costs of each required citation search it conducts. To determine whether reimbursement for a specific lead-based paint citation search is warranted, the servicer must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438.

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Section 102

Section 102.03
FHA Mortgage Loans
(10/01/09)

The servicer of an FHA-insured mortgage loan must send the borrower information about the various alternatives HUD offers for resolving mortgage loan delinquencies before it can pursue foreclosure proceedings. Generally, Fannie Mae requires the servicer to send a breach letter (or any similar notice required by HUD) as soon as a borrower misses his or her third monthly payment (unless HUD requires that it be sent at a different date).

If the borrower does not pursue HUD's foreclosure prevention alternatives (or is not eligible for them), the servicer must refer the mortgage loan to an attorney to begin foreclosure proceedings no later than 45 days after it notifies the borrower of his or her breach of the terms of the mortgage loan. The servicer **must** begin foreclosure proceedings for an FHA mortgage loan within six months from the date of the mortgage loan default, or within such other time period approved or authorized by HUD. For HUD's purposes, foreclosure proceedings begin when the first public action required by law takes place—such as the filing of a complaint or petition, recording a notice of default, or publishing a notice of sale.

Section 102.04
Conventional and Rural
Development First
Mortgage Loans
(10/01/09)

No servicer is permitted to ignore a defaulted mortgage loan, but must promptly implement reasonable remedial actions, based on the facts and circumstances of the particular mortgage loan and borrower. If, based on the guidelines outlined in *Part VII* and prudent servicing practices, the servicer determines that foreclosure prevention would not cure the default or result in a successful workout, then the servicer must proceed with Fannie Mae's standard foreclosure procedure guidelines.

Foreclosure must generally begin 30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met, but postponements may be permitted to facilitate foreclosure prevention alternatives. Fannie Mae requires that servicers have appropriate foreclosure referral policies that allow for foreclosure referrals to begin when all reasonable foreclosure prevention options have been exhausted and as soon as applicable law permits. Foreclosure is considered to have begun on the date when the servicer refers the matter to the foreclosure attorney or trustee. The servicer must maintain a record of the date of the referral in the mortgage loan file.

The servicer of a conventional or RD-guaranteed first mortgage loan must send the borrower a breach letter at least 30 days before foreclosure proceedings begin. When the servicer believes that the property has been abandoned or that the borrower has displayed an obvious lack of concern for the mortgage obligation, this letter must be sent at the earliest possible date.

The breach letter must clearly explain

- the exact nature of the breach (for example, a default in payments);
- what action is required to cure the breach;
- the date by which the breach must be cured;
- the approximate date that foreclosure action will begin if the borrower does not cure the breach by the specified date; and
- the possibility that a deficiency judgment might be pursued if the foreclosure proceedings are undertaken (if applicable).

The servicer must follow Fannie Mae's standard guidelines and send the breach letter at the 45th day of delinquency, but may postpone sending it until the 62nd day of delinquency to facilitate foreclosure prevention alternatives. The servicer must generally refer the mortgage loan to an attorney (or trustee) to begin foreclosure proceedings no later than 34 days after the date it issued the breach letter or in accordance with applicable law.

**Section 102.05
Conventional Second
Mortgage Loans
(01/31/03)**

The servicer of a conventional second mortgage loan must send the borrower a breach letter at least 30 days before foreclosure proceedings begin. When the servicer believes that the property has been abandoned or that the borrower has displayed an obvious lack of concern for the mortgage loan obligation, this letter must be sent at the earliest possible date. To avoid unnecessary delays in the foreclosure process, the servicer must send the letter after the borrower misses his or her second monthly payment (but no later than the 45th day of delinquency).

The breach letter must clearly explain

- the exact nature of the breach (for example, a default in payments);
- what action is required to cure the breach;
- the date by which the breach must be cured;
- the approximate date that foreclosure action will begin if the borrower does not cure the breach by the specified date; and
- the possibility that a deficiency judgment might be pursued if the foreclosure proceedings are undertaken (if applicable).

After the servicer sends the required breach letter, its next action depends on whether the second mortgage loan has conventional mortgage insurance and, if it does, on whether both the first and second mortgage loans are in default and whether Fannie Mae has an interest in only one mortgage loan or both the first and second mortgage loans. The terms of the recourse (or credit enhancement) arrangement under which Fannie Mae purchased or securitized an uninsured second mortgage loan will determine whether foreclosure proceedings will be initiated and the type(s) of actions the servicer must take. Before making a decision to foreclose any conventional second mortgage loan (or to advance the funds to bring the first mortgage loan current), the servicer must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 to obtain instructions. Instructions for proceeding generally can be obtained by submitting a case through the Homesaver Solutions Network (HSSN).

Once a final determination has been made to initiate foreclosure for a second mortgage loan, the servicer must refer the case to an attorney to begin foreclosure proceedings no later than 30 days after the date it issued the breach letter.

A. Insured second mortgage loan in default. If an insured second mortgage loan is in default, but the first mortgage loan is current, the servicer may be instructed to foreclose on the second mortgage loan, acquire title to the property subject to the first mortgage loan, and file a claim with the mortgage insurer. (During the course of the foreclosure

proceedings, the mortgage insurer may instruct the servicer to advance funds to satisfy the first mortgage loan. In such cases, the servicer must do so and include the advanced funds in the insurance claim it files.) If the mortgage insurer does not accept conveyance and take title to the acquired property, the second mortgage loan servicer must notify Fannie Mae's National Property Disposition Center. At that time, the servicer also must advise Fannie Mae of the effect of any due-on-sale clause in the first mortgage loan.

- If Fannie Mae does not have an ownership interest in the first mortgage loan, the servicer will need to advance funds to make sure the first mortgage loan stays current while the property is on the market.
- If Fannie Mae has an ownership interest in the first mortgage loan, the servicer should not advance funds to keep it current since eventually Fannie Mae will need to foreclose it to acquire clear title to the property.

B. Insured first and second mortgage loans in default. If both the first and second mortgage loans are in default, the second mortgage loan servicer must assume control over the foreclosure process to ensure that Fannie Mae's interest in the second mortgage debt will be fully protected. However, when Fannie Mae has an ownership interest in both mortgage loans, there may be occasions when Fannie Mae decides that the most efficient liquidation method would be to instruct the first mortgage loan servicer to bid both the first and second mortgage debts at the foreclosure sale and to acquire title on Fannie Mae's behalf. If Fannie Mae pursues this alternative, the first mortgage loan servicer can still file a claim under the mortgage insurance policy for that mortgage loan, and Fannie Mae will assume the responsibility for disposing of the acquired property if the mortgage insurer does not accept title to it.

While foreclosure proceedings are under way, the mortgage insurer may instruct the servicer of the second mortgage loan to reinstate or to satisfy the first mortgage loan.

- If the mortgage insurer instructs the servicer to reinstate the first mortgage loan (or does not issue instructions to the contrary before the date of the foreclosure sale), the servicer must advance the funds

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necessary to reinstate the first mortgage loan, proceed with the foreclosure of the second mortgage loan, and acquire title to the property subject to the first mortgage loan.

- If the mortgage insurer instructs the servicer to satisfy the mortgage loan, the servicer must do so since that will enable it to tender to the mortgage insurer title free and clear of all liens following the second mortgage loan foreclosure. Funds advanced to satisfy the first mortgage loan cannot be included in the claim unless the mortgage insurer authorizes the advance; therefore, the servicer should not pay off the first mortgage loan if the mortgage insurer does not notify it to do so (unless Fannie Mae has issued specific instructions to that effect).

In any instance in which the mortgage insurer does not take title to the property, Fannie Mae will be responsible for selling the property. (To assist Fannie Mae in marketing the property, the servicer of the second mortgage loan must advise Fannie Mae about the effect of any due-on-sale clause in the first mortgage loan.) If the first mortgage loan was not satisfied and Fannie Mae does not have an ownership interest in it, the servicer must advance funds to keep the first mortgage loan current until Fannie Mae is able to dispose of the property. If Fannie Mae has an ownership interest in the first mortgage loan, the servicer should not advance funds to keep it current since eventually Fannie Mae will need to foreclose it to acquire title to the property.

Section 102.06
VA Mortgage Loans
(10/01/09)

The servicer of a VA-guaranteed mortgage loan must send all notices that VA requires to notify the borrower of his or her breach of the terms of the mortgage loan. Generally, Fannie Mae requires the servicer to send an official breach notice as soon as the borrower misses his or her third monthly payment (unless VA requires that it be sent at a different date).

Section 103
Reinstatements
(01/31/03)

The servicer can accept a full reinstatement of a first mortgage loan even if foreclosure proceedings have already begun. This also is true for a second mortgage loan as long as the first mortgage loan is not delinquent or, if it is, as long as the first mortgage loan servicer has agreed to arrangements for curing the delinquency. A full reinstatement includes payment of

- all delinquent mortgage loan payments (bearing interest at the rate applicable on the date they became due);

- late charges on the delinquent payments;
- any funds the servicer advanced for protection of the security or to pay taxes, insurance premiums, etc.;
- the costs of performing the preforeclosure property inspection required by Fannie Mae (or HUD or VA, as applicable), if permitted under the terms of the security instrument; and
- all legal fees (including attorney or trustee fees) that were actually incurred in connection with the foreclosure proceedings that are permitted under the terms of the note, security instrument and applicable law.

The servicer also may accept a borrower's proposal for a partial reinstatement if it believes that the borrower is acting in good faith and that the mortgage loan can be brought current within a reasonable time. The servicer must require that the proposed plan be submitted in writing so that a more formal repayment plan can be drawn up. The repayment plan must clearly state the action that the servicer may take to resume the foreclosure action if the borrower does not meet the agreed-upon terms.

Generally, when the funds collected from the borrower for an actual/actual remittance type mortgage loan equal one or more full installments of P&I, they must be applied to the mortgage loan balance and remitted to Fannie Mae in accordance with the servicer's usual remittance schedule. Any funds representing partial payments must then be retained as unapplied funds until enough additional funds are received to make up a full payment. However, if the application of partial payments would jeopardize Fannie Mae's legal position in the event that foreclosure proceedings needed to be resumed, the servicer must hold all funds received for a partial reinstatement and should not apply them until it receives the full amount required to reinstate the mortgage loan.

Funds collected for the reinstatement of a mortgage loan that is a scheduled/actual or scheduled/scheduled remittance type also should be applied to reduce the mortgage loan balance (or held as unapplied until they equal a full payment); however, they do not have to be remitted to Fannie Mae if the servicer made delinquency advances to ensure that Fannie Mae received its full monthly remittance during the delinquency

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period. In such cases, the funds should be used to reimburse the servicer for its delinquency advances, although any funds in excess of the servicer's delinquency advances must be remitted in accordance with the servicer's usual remittance schedule.

In any instance in which Fannie Mae has reimbursed the servicer for its advances for foreclosure-related expenses (including the costs of any preforeclosure property inspection), the servicer must repay the reimbursement by remitting the funds as a special remittance. Funds to repay Fannie Mae's reimbursement of the servicer's advances must be remitted to Fannie Mae separately from any remittances for P&I collections. (also see *Part IX, Section 203*)

If the designated document custodian returned the original mortgage note to the servicer for use in the foreclosure action, the servicer must return it by submitting a *Custody Document Transmittal* ([Form 276](#)) to the designated document custodian when the mortgage loan is either partially or fully reinstated. The servicer of an MBS mortgage loan must return any custody documents in its possession to Fannie Mae's designated document custodian or the third-party document custodian for the pool.

The servicer does not have to report a full reinstatement of the delinquency to Fannie Mae. However, if the delinquency is partially resolved by some type of repayment plan, the servicer must update Fannie Mae's records by providing the appropriate codes in the next delinquency status information it transmits to Fannie Mae.

Section 104
Referral to Foreclosure
Attorney/Trustee
(08/05/09)

The process for selecting foreclosure attorneys differs depending upon whether the property is located in a jurisdiction in which Fannie Mae has retained attorneys or is filed in a jurisdiction in which Fannie Mae relies upon the servicer to select and retain qualified and experienced attorneys of its choice to handle foreclosures.

In all cases, servicers must advise the attorney or trustee to whom the referral is made that Fannie Mae owns or securitizes the mortgage loan being referred.

In all cases, following the 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 (or trustee) fees; monitoring timeline performance; and fulfilling all of its other servicing obligations.

In order to limit risks arising from the concentration of the legal work relating to Fannie Mae's delinquent mortgage loans with a single law firm in a jurisdiction, Fannie Mae urges servicers to diversify their referrals of Fannie Mae matters among two or more law firms in each jurisdiction. Fannie Mae will monitor the concentration of its legal work and reserves the right to suspend the referral of new cases to attorneys (or to reassign previously referred cases) in order to regulate concentration, capacity, performance, or for other reasons.

Section 104.01
Fannie Mae–Retained
Attorneys (10/01/08)

If the security property is located in a jurisdiction in which Fannie Mae has retained attorneys, a servicer must, with the exception of the two scenarios identified below, use one of the firms on the Retained Attorney List available on eFannieMae.com for the foreclosure of (or bankruptcy cases involving) conventional or government mortgage loans held in Fannie Mae's portfolio, that are part of an MBS pool that has the special servicing option, or that are part of a shared-risk MBS pool for which Fannie Mae markets the acquired property.

The two exceptions are:

- Special guidelines apply for foreclosures in the states of Arizona, California, and Washington. (Refer to *Section 104.02, Special Rules for Arizona, California, and Washington Foreclosures (10/01/08).*)
- If a foreclosure referral was made prior to the time Fannie Mae identified retained attorneys for a jurisdiction, the referral may remain with the original attorney to whom it was referred, and the attorney may handle any subsequent bankruptcy case that is filed before completion of the foreclosure or reinstatement of the mortgage loan if the servicer concludes that the attorney has the necessary qualifications.

For a current listing of the jurisdictions, and the names, addresses, and telephone numbers for the Fannie Mae–retained attorneys, please refer to eFannieMae.com and reference the Retained Attorney List. For jurisdictions that are identified on the Retained Attorney List, servicers are required to direct all new Fannie Mae foreclosure and bankruptcy referrals to a retained attorney on or after the posted effective date. When Fannie Mae has retained more than one attorney for a jurisdiction, the servicer may use any or all of the retained attorneys to handle its referrals in that jurisdiction.

The servicer is responsible for monitoring all aspects of the performance of any Fannie Mae–retained attorney to whom it makes a referral, including foreclosure prevention activities, cure rates, and timeline performance. However, the servicer will not be required to reimburse Fannie Mae for any losses incurred because the retained attorney failed to properly meet his or her responsibilities, nor will the servicer be subject to the imposition of compensatory fees related to deficiencies in the performance of the retained attorney—as long as the losses or deficiencies are unrelated to any failure by the servicer to provide required or requested documents, information, or signatures to the attorney.

A servicer also may choose a Fannie Mae–retained attorney to handle foreclosure proceedings for any mortgage loans in regular servicing option MBS pools, held in Fannie Mae’s portfolio and serviced under the regular servicing option, or shared-risk MBS pools for which the servicer is responsible for marketing the acquired property. In such instances, the attorney is considered servicer-retained and the servicer (not Fannie Mae) will be responsible for the terms of the relationship with the attorney just as it is for relationships it has with other attorneys it retains on its own behalf. The servicer will be fully responsible for any losses resulting from deficiencies in the attorney’s performance.

The servicer must provide appropriate documentation and mortgage loan status data for each case it refers to a Fannie Mae–retained foreclosure attorney. The servicer must submit a complete referral package to the selected attorney and work with the selected attorney to determine the documents needed in that particular jurisdiction and whether the documents may be photocopies of the originals. *Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings* itemizes the mortgage loan status data that the servicer must provide. The servicer and the attorney it

selects must interact throughout the foreclosure proceedings to ensure that the foreclosure is completed consistent with Fannie Mae's guidelines.

Exhibit 2: Expected Servicer/Attorney (or Trustee) Interaction includes a list of key instances of required servicer-attorney/trustee interactions (although it is not all-inclusive).

Each retained attorney will execute an engagement letter with Fannie Mae which will, among other things:

- document the existence of an attorney-client relationship with Fannie Mae;
- acknowledge Fannie Mae's right to communicate directly with the attorneys and monitor and/or audit the attorneys' handling of its cases;
- specify the attorney's fees, impose limits on costs, and prohibit the payment of outsourcing or referral fees; and
- require attorneys to directly notify Fannie Mae of nonroutine litigation and certain other matters.

In most cases, the retained attorney will also represent the servicer (and may have signed a separate engagement letter with the servicer). Fannie Mae's engagement letter with the attorney will provide that in the event a conflict of interest arises during the course of representing both the servicer and Fannie Mae, the attorney must notify both the servicer and Fannie Mae of the conflict, and Fannie Mae and the servicer will work together to resolve the conflict.

Section 104.02
Special Rules for
Arizona, California, and
Washington Foreclosures
(10/01/08)

For non-judicial foreclosures in Arizona, California, and Washington, servicers may continue to employ trustees of their choice. To facilitate continuity in the transition of files from foreclosure through REO closing, when a referral is made to a trustee in one of these three states, the servicer must require that the trustee obtain evidence of title for the foreclosure from a title company that appears on the Approved Title Company List for Foreclosure Evidence of Title posted on eFannieMae.com. The title company chosen will subsequently represent Fannie Mae's interests as seller in connection with the REO closing. All legal matters in Arizona, California, and Washington, including *judicial* foreclosure proceedings,

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bankruptcy cases, and litigation, must be referred to attorneys on the Retained Attorney List.

Section 104.03
Servicer-Retained
Attorneys/Trustees and
Special Rules for Nevada
(10/01/08)

For jurisdictions that are not included on the Retained Attorney List, Fannie Mae will continue to rely upon servicers to select and retain qualified attorneys (or trustees) of their choice to handle Fannie Mae foreclosure and bankruptcy matters in accordance with Fannie Mae's standard guidelines.

When the servicer retains its own attorney (or trustee) to handle foreclosure proceedings, Fannie Mae requires the servicer to retain competent, diligent, local legal counsel (or trustees) who are highly experienced in conducting foreclosures. Foreclosure services must be performed by qualified and experienced attorneys (or trustees) in accordance with applicable law and professional standards of conduct.

The servicer is responsible for monitoring all aspects of the performance of any foreclosure attorney (or trustee) retained, providing its attorney (or trustee) with the necessary documentation and mortgage loan status data for each mortgage loan it refers to foreclosure (*Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings* details the mortgage loan status data the servicer must provide). The servicer must advise the attorney (or trustee) it selects that Fannie Mae has purchased or securitized the mortgage loan being referred and that Fannie Mae requires the attorney (or trustee) to agree to perform services within Fannie Mae's guidelines and for the standard fees and costs that Fannie Mae has published (Fannie Mae will not reimburse the servicer for any fees and costs that exceed those listed in *Exhibit 3: Attorney's and Trustee's Fees* unless it has approved excess fees in accordance with its procedures). The attorney (or trustee) must acknowledge that any legal files it develops belong to Fannie Mae and agree that he or she will not, at any time, assert any lien rights against those files. The attorney (or trustee) also must agree that all documents, papers, and funds held in connection with a legal action must be returned to Fannie Mae promptly if his or her services are terminated. Fannie Mae requires the servicer to reimburse Fannie Mae for any losses that may occur because its retained attorney failed to meet his or her responsibilities diligently.

The servicer must make sure that any attorney (or trustee) it retains has no financial or other relationship with any party involved in the foreclosure or

sale of the property. The servicer must inquire whether its attorney (or trustee) has any interest in any Affiliated Business Entity that provides services in connection with any foreclosure, bankruptcy, or eviction proceeding if the fees or costs of such services are reimbursable by Fannie Mae under this *Guide*. An Affiliated Business Entity includes any entity in which any principal of the firm or any employee or family member (including in-laws) of any principal or employee of the firm has a direct or indirect decision-making, ownership, or financial interest. The servicer must require its attorney (or trustee) to promptly disclose any such relationship or interest, and agree that any fees or expenses for such services do not exceed the customary and reasonable fees for comparable services in their jurisdiction. The servicer is responsible for monitoring the fees or expenses charged by any Affiliated Business Entity and Fannie Mae will require the servicer to reimburse Fannie Mae for any unreasonable or excessive fees or costs.

The servicer and its attorney (or trustee) must interact throughout the foreclosure proceedings to ensure the foreclosure is completed in a timely manner. *Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings* itemizes the mortgage loan status data that the servicer must provide. *Exhibit 2: Expected Servicer/Attorney (or Trustee) Interaction* includes a list of key instances of required servicer–attorney/trustee interactions (although this list is not all-inclusive).

Although Fannie Mae has not yet identified retained attorneys for Nevada, servicers that refer non-judicial foreclosures to trustees in Nevada must require that the trustee obtain evidence of title for the foreclosure from a title company that appears on the Approved Title Company List for Foreclosure Evidence of Title posted on eFannieMae.com. The title company chosen will subsequently represent Fannie Mae’s interests as seller in connection with the REO closing. Until Fannie Mae identifies retained attorneys for Nevada, Fannie Mae will continue to rely upon servicers to select and retain qualified attorneys of their choice to handle Fannie Mae foreclosure and bankruptcy matters in Nevada in accordance with Fannie Mae’s requirements.

Section 104.04
Attorney (or Trustee)
Fees (10/01/09)

The same attorney (or trustee) fees will apply for all foreclosure or deed-in-lieu of foreclosure legal work—regardless of whether the work is performed by a servicer-retained attorney (or trustee) or one of the Fannie Mae–retained attorneys. The servicer is responsible for paying all attorney

(or trustee) fees and expenses for both servicer-retained attorneys (or trustees) and Fannie Mae-retained attorneys. The maximum attorney's (or trustee's) fees that Fannie Mae allows for legal work related to foreclosures of whole mortgage loans, participation pool mortgage loans, and MBS mortgage loans serviced under the special servicing option appear in *Exhibit 3: Attorney's and Trustee's Fees*.

All attorneys (or trustees) must submit their statements for all fees and expenses directly to the servicer. Before requesting that Fannie Mae reimburse the servicer for fees 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. The services must be performed in accordance with applicable law and professional standards of conduct. The servicer may charge the borrower only those foreclosure fees and costs that are permitted under the terms of the note, security instrument, and applicable law and that are prorated to reasonably relate to the amount of work actually performed. Fannie Mae will reimburse the servicer for fees for legal and trustee services that it cannot recover from the borrower only to the extent that the fees are reasonable, necessary, and actually rendered to protect Fannie Mae's interests.

The servicer, its agents, or any outsourcing firm it employs may not charge (either directly or indirectly) any outsourcing fee, referral fee, packaging fee, or similar fee in connection with any Fannie Mae mortgage loan. Moreover, the amount of any fee charged to any attorney (or trustee) for technology usage or electronic invoice submission must be reasonable in relation to the benefit received by the attorney (or trustee).

In general, the maximum allowable foreclosure fee for a judicial foreclosure is intended to cover all services that are typically required to be performed by foreclosure counsel in the prosecution of a judicial foreclosure in accordance with local law. These steps include:

1. ordering title;
2. reviewing title reports and exceptions;
3. drafting Complaint, Summons, Lis Pendens, and other papers necessary to initiate the foreclosure action;

4. filing the foreclosure Complaint and Lis Pendens;
5. executing all steps necessary to obtain service of process on all defendants, including review of process server affidavits, obtaining court permission to serve by publication, and referral and tracking of published notices;
6. preparing legal papers for entry of foreclosure judgment, whether by default or through summary judgment process;
7. obtaining judgment of foreclosure, including one court appearance;
8. preparing all legal papers to conduct the foreclosure sale;
9. conducting, or arranging for sheriff or other third party to conduct, the foreclosure sale;
10. obtaining judicial confirmation of foreclosure sale, where required by local law; and
11. preparing all legal papers necessary to convey title to Fannie Mae or a successful third-party bidder

As with judicial foreclosures, the maximum allowable foreclosure fee for non-judicial foreclosures is intended to cover all services that are typically required to be performed by foreclosure trustee or counsel in the completion of a non-judicial foreclosure resulting in title transferring from the borrower to the highest bidder at the foreclosure sale, in accordance with local law. These steps include:

1. ordering title;
2. reviewing title reports and exceptions;
3. preparing all necessary legal papers to initiate the non-judicial foreclosure process, including Substitution of Trustee, Notice of Default, and Notice of Sale;
4. recording the necessary documents in the appropriate county recorder's office;

5. executing all steps necessary to obtain service of process on all persons entitled to notice, including review of process server affidavits and referral and tracking of published notices;
6. publishing and posting the requisite notices as required by local foreclosure law;
7. preparing all legal papers to conduct the foreclosure sale;
8. conducting, or arranging for sheriff or other third party to conduct, the foreclosure sale;
9. preparing and filing a report of sale with the local court or recorder's office, where required by local law; and
10. preparing all legal papers necessary to convey title to Fannie Mae or a successful third-party bidder,

For both judicial and non-judicial foreclosure actions, the maximum allowable attorney (or trustee) fee for non-judicial foreclosure proceedings does not include the costs involved in such a proceeding, such as title charges, filing fees, recordation fees, process server expenses, and publication costs, as applicable.

Fannie Mae will reimburse the servicer for reasonable attorneys' fees necessary to resolve issues caused by unexpected events, unless they are due to (1) a breach or alleged breach of selling warranties or representations or origination or selling activities; (2) the lender's failure or alleged failure to satisfy its duties and responsibilities as a servicer; or (3) actual or alleged error or lack of diligence on the part of a servicer-retained attorney or trustee. Events which may require additional legal services include, but are not limited to, the following:

- additional court appearances due to borrower delay or court-initiated continuances;
- motions to shorten redemption periods (for instance, when a property has been abandoned);

- litigation activities, including discovery practice, motions, trial, and appeal, engendered by borrower defenses not related to origination or servicing of the mortgage loan or the acts or omissions of an attorney (or trustee) selected and retained by the servicer;
- probate court practice required due to the death of the borrower or co-borrower;
- intervention by other claimants, including taxing authorities or homeowners' or condominium associations; and
- conducting a closing to complete a sale to a third-party bidder.

Fannie Mae–retained attorneys are required to have appropriate processes in place to obtain all needed excess fee approvals. For foreclosure referrals sent to servicer-retained attorneys or trustees, the servicer must ensure the attorney or trustee can comply with Fannie Mae's excess fee process. If necessary, servicer-retained attorneys or trustees can request excess fee training by contacting Fannie Mae's National Servicing Organization by e-mail message (to excess_fee_request@fanniemae.com).

If additional legal (or trustee) services are required to protect Fannie Mae's interest and these legal (or trustee) services are not within the scope of services contemplated by the maximum allowable foreclosure fee and are required due to a breach or alleged breach of selling warranties or representations or origination or selling activities or to the lender's failure or alleged failure to satisfy its duties and responsibilities as a servicer, Fannie Mae requires the servicer to pay counsel or the trustee a reasonable fee for their services. Some of these events may include, but are not limited to:

- Title curative work, including judicial proceedings to eliminate recorded liens that are prior in time; judicial proceedings to account for missing intervening assignments; and legal analysis and communications with prior lien holders and title companies.
- Litigation activities, including discovery practice, motions, trial, and appeal, caused by borrower defenses related to origination or servicing of the mortgage loan, including payment dispute allegations.

Fannie Mae will not reimburse a servicer for legal fees and expenses related to actions that are essentially servicing functions or for expenses that are properly allocated to the attorney's (or trustee's) overhead expenses (since such expenses are taken into consideration when Fannie Mae establishes its fee schedule). Expenses that generally are considered to be overhead costs include travel time and expenses, document preparation charges, secretarial and word-processing "time" charges, fees for notary services, postage, photocopy charges, charges for certified copies of documents, charges for legal services to the trustee, telephone charges, and any charges for calls or correspondence to the servicer or Fannie Mae. Fannie Mae will reimburse the servicer for the payment it made to the trustee to cover actual legally mandated postage costs (first class, certified, or registered mail) for any mailings of legal notices required in connection with the foreclosure, but not for other mailings (such as charges for overnight delivery or mailing preparation services).

Prorated attorney (or trustee) fees. Although Fannie Mae has established maximum allowable foreclosure fees, it will only reimburse a servicer for attorney (or trustee) fees that have been prorated to reasonably relate to the amount of legal work actually performed by the attorney (or trustee). Should a foreclosure be stopped before its completion (because of a reinstatement, bankruptcy filing, or workout agreement), the fee that the attorney (or trustee) charges in connection with the foreclosure proceedings must be prorated to the amount of work actually performed before the foreclosure action was stopped, and consistent with Fannie Mae's standard reimbursable fee (or any additional fee Fannie Mae authorized). Before requesting Fannie Mae to reimburse it for fees paid to an attorney (or trustee), a servicer must review and approve the fees and costs to ensure that they are in compliance with Fannie Mae's guidelines.

When the foreclosure is stopped because the mortgage loan is reinstated or a workout agreement is executed, the attorney (or trustee) fee related to the foreclosure proceedings must bear a proportional relationship to the fee that would have been charged had the foreclosure proceedings continued to their completion. The servicer and its attorney (or trustee) may charge the borrower only those foreclosure fees and costs that are permitted under the terms of the note, security instrument, and applicable law. The servicer must include the applicable attorney (or trustee) fee as part of the amount required to reinstate the mortgage loan. All out-of-

pocket costs that the attorney (or trustee) incurred prior to the cessation of foreclosure proceedings also must be collected from the borrower as a condition of the reinstatement or workout agreement. These out-of-pocket expenses may include such things as foreclosure title searches, court filing fees, service of process costs, and publication costs. (Note: A California trustee must not include in the reinstatement amount “early” publication costs that cannot be charged to the borrower because they are not “legally incurred” under California law.) If the servicer fails to include as part of the amount required to reinstate or pay off the mortgage loan any legal fees and costs that were incurred in connection with the foreclosure proceedings (or is prohibited from charging the borrower for certain costs under applicable law), it must reinstate or pay off the loan without collection of such legal fees and costs from the borrower. In addition, the servicer must pay the attorney (or trustee) for the fees and costs even though the funds were not collected from the borrower. The servicer cannot request that Fannie Mae reimburse it for any legal fees and costs that it failed to include as part of the amount required to reinstate or pay off the loan, unless it was not legally permissible to collect the fees and costs from the borrower. If it was not legally permissible to collect fees and costs from the borrower, Fannie Mae will reimburse the servicer for such fees and costs to the extent that services were performed to protect Fannie Mae’s interests and were actually rendered, and the fees and costs are reasonable and necessary and comply with Fannie Mae’s guidelines.

When the foreclosure is stopped because the borrower files for bankruptcy, the attorney (or trustee) fee charged for the initial foreclosure proceedings must relate only to the work the attorney (or trustee) completed prior to the bankruptcy filing and must bear a proportional relationship to the fee that would have been charged had the foreclosure proceedings continued to their completion. Then, if the foreclosure proceedings are subsequently recommenced, the fee paid to the attorney (or trustee) for the subsequent foreclosure proceedings will vary depending on whether the earlier proceedings can be resumed or must be started over. If the earlier proceedings can be resumed, the fee for the completion of the foreclosure must relate to the amount of work the attorney (or trustee) actually performs after the resumption of the proceedings. If the proceedings have to be started over, the attorney (or trustee) will be entitled to the full amount of Fannie Mae’s standard fee once the foreclosure is completed.

It is not necessary for prorated attorney's (or trustee's) fees to be evenly distributed over the entire foreclosure process. The initial file review and the commencement of the foreclosure proceedings generally are the most labor-intensive phases of the process, which means that a greater portion of the fee may relate to these activities. The servicer must determine the reasonableness of a prorated fee based on all of the facts and circumstances of each particular case.

When preparing a *Cash Disbursement Request* ([Form 571](#)) to request reimbursement for attorney (or trustee) fees and costs, the servicer must include any information that Fannie Mae needs to verify the accuracy of the requested amount—such as a description of the work that was performed; a copy of Fannie Mae's written approval of the additional attorney fees; and an explanation of how a prorated fee was derived. The servicer must make sure that it distinguishes between a prorated attorney (or trustee) fee and the attorney's (or trustee's) out-of-pocket costs since combining the two may make it appear that the attorney (or trustee) charged more than Fannie Mae's maximum allowable attorney (or trustee) fee, and can result in either disallowance of the fee or a delay in the reimbursement. To avoid these problems, a servicer must make sure that the attorney's (or trustee's) prorated fees and out-of-pocket costs are itemized separately, the prorated fees are consistent with the status of the case (or any additional fees Fannie Mae authorized), and the out-of-pocket costs or expenses appear reasonable, necessary, and consistent with the status of the case. The servicer must submit its [Form 571](#) to Fannie Mae using either the *MortgageLinks* Asset Management Network's Cash Disbursement Request application or an Advantis CPU-to-CPU transmission.

Section 104.05
Allowable Time Frames
for Completing
Foreclosure (08/06/08)

To ensure that the foreclosure is handled in a timely and professional manner, the servicer is responsible for monitoring the attorney (or trustee). Fannie Mae has established time frames within which it expects routine foreclosure proceedings to be completed. Refer to [Foreclosure Time Frames](#) on eFannieMae.com for the allowable time lapses between the time the case is referred to the attorney (or trustee) for action and the completion of the foreclosure sale.

These allowable time frames represent the time typically required for routine foreclosure proceedings, given the legal requirements of the applicable jurisdiction. Fannie Mae monitors the servicer's management

of the foreclosure process by reviewing at the first of each month each mortgage loan for which Fannie Mae expected action to be completed in the previous month (based on these time frames). If there appears to have been a delay in completing the foreclosure process—and the servicer is unable to provide a reasonable explanation for the delay—Fannie Mae may require the servicer to pay a compensatory fee. The compensatory fee will take into consideration the outstanding principal balance of the mortgage loan, the applicable pass-through rate, the length of the delay, and any additional foreclosure costs that are directly attributable to the delay.

The servicer is responsible for monitoring all aspects of the performance of any attorney (or trustee) to whom it makes a referral, including foreclosure prevention activities, cure rates, and timeline performance. The servicer, however, will not be required to reimburse Fannie Mae for any losses incurred because a Fannie Mae–retained attorney failed to properly meet his or her responsibilities, nor will the servicer be subject to the imposition of compensatory fees related to deficiencies in the performance of the retained attorney—as long as the losses or deficiencies are unrelated to any failure by the servicer to monitor or manage the performance of the retained attorney or failure of the servicer to timely provide required or requested documents, information, or signatures to the retained attorney.

Section 104.06
Filing IRS Form 1099—
MISC (01/31/03)

The servicer must report all attorney (or trustee) fees it paid to servicer-retained attorneys or trustees, or to Fannie Mae–retained attorneys for handling foreclosure proceedings, by filing Form 1099-MISC (*Miscellaneous Income*) with the Internal Revenue Service and other parties. These forms must be filed in the servicer’s name, using its IRS tax identification number.

Section 105
Conduct of Foreclosure
Proceedings (05/10/10)

When Fannie Mae is the mortgagee of record for a mortgage loan, the foreclosure must be conducted in Fannie Mae’s name. (The only exception to this involves MBS mortgage loans serviced under the regular servicing option that are secured by properties located in Utah or Mississippi. If Fannie Mae is the mortgagee of record for one of these mortgage loans, the servicer must request that Fannie Mae reassign the mortgage loan to it so the foreclosure can be completed in its name.) When Fannie Mae has granted the servicer its limited power of attorney to execute substitutions of trustees on Fannie Mae’s own behalf, the servicer generally must

execute any required substitutions of trustees. However, if state law or customary practice prohibits an attorney-in-fact from executing substitutions of trustees, the servicer must submit the substitution of trustee documents to Fannie Mae for execution before the foreclosure proceedings begin.

When the servicer is the mortgagee of record for a mortgage loan, the jurisdiction in which the security property is located will be a factor in how the foreclosure proceedings are conducted or initiated.

- In most states, the foreclosure attorney (or trustee) must initiate the proceedings in the servicer's name (or in the participating lender's name, if the servicer is not the mortgagee of record for a participation pool mortgage loan). The attorney (or trustee) must subsequently have title vested in Fannie Mae's name in a manner that will not result in the imposition of a transfer tax. Examples of ways to accomplish this include the assignment of the foreclosure bid or judgment to Fannie Mae, inclusion of appropriate language in the judgment that directs the sheriff or clerk to issue a deed in Fannie Mae's name, recordation of an assignment of the mortgage or deed of trust to Fannie Mae immediately before the foreclosure sale, recordation of a grant deed to Fannie Mae immediately following the foreclosure sale, etc. The servicer and the foreclosure attorney (or trustee) must determine the most appropriate method to use in each jurisdiction. If recordation of the assignment of the mortgage or deed of trust to Fannie Mae is the selected option, the assignment should not be recorded any earlier than is required by the state's foreclosure procedures because of the possibility that the mortgage loan may be reinstated before the foreclosure sale.
- In any state (or jurisdiction)—such as Rhode Island; New Hampshire; or Orleans Parish, Louisiana—in which the foreclosure proceedings must be conducted in Fannie Mae's name to prevent the imposition of a transfer tax, an assignment of the mortgage or deed of trust to Fannie Mae must be prepared and recorded in a timely manner to avoid any delays in the initiation of the foreclosure proceedings. If Fannie Mae's designated document custodian or a third-party document custodian has custody of an original unrecorded assignment of the mortgage to Fannie Mae, the servicer may either request the return of that

document (so it can be recorded) or prepare a new assignment (if that will expedite the process.) Once the assignment to Fannie Mae has been recorded, the foreclosure proceedings must be conducted in Fannie Mae's name.

A servicer which also services a subordinate-lien mortgage loan may file the foreclosure of the first-lien mortgage loan in Fannie Mae's name in order to avoid having to "sue itself" in the foreclosure action.

MERS must not be named as a plaintiff in any foreclosure action, whether judicial or non-judicial, on a mortgage loan owned or securitized by Fannie Mae. MERS is the mortgagee of record when either a mortgage names MERS as the original mortgagee and is recorded in the applicable land records, or a completed and recorded assignment names MERS as the mortgage assignee. Therefore, when MERS is the mortgagee of record, the servicer will need to prepare a mortgage assignment from MERS to the servicer, and then bring the foreclosure in its own name, unless Fannie Mae specifically requires that the foreclosure be brought in the name of Fannie Mae. In that event, the assignment will need to be from MERS to Fannie Mae; the assignment must be to Fannie Mae, care of the servicer at the servicer's address for receipt of notices. In all cases, the assignment from MERS to the servicer must be recorded before the foreclosure begins.

The servicer must consult its foreclosure attorney to determine any other legal requirements that might apply when conducting foreclosures of mortgage loans in which MERS is the prior mortgagee of record. Fannie Mae will not reimburse the servicer for any expense incurred in preparing or recording an assignment of the mortgage loan from MERS to the servicer or to Fannie Mae.

The servicer must ensure that the foreclosure attorney (or trustee) accurately identifies the status of the servicer in every foreclosure action. The servicer may never be identified as the "owner" of the note that is the subject of the foreclosure action. The servicer may be identified as the "holder" of the note upon receipt of actual or constructive possession of the note. The servicer may also be identified as the mortgagee of the mortgage, or beneficiary of the deed of trust being foreclosed.

In any event, if an assignment has been recorded from MERS to either the servicer or Fannie Mae, and the borrower reinstates the mortgage loan prior to completion of the foreclosure proceedings, the servicer may choose to leave the mortgage in the name of the servicer (or Fannie Mae) or it may choose to reassign the mortgage to MERS and re-register the mortgage with MERS. Re-assigning and re-registering the mortgage with MERS is not required by Fannie Mae and any such action will be at the discretion and expense of the servicer.

If a mortgage is assigned to Fannie Mae, it is not necessary for the mortgage to be assigned back to the servicer.

Section 105.01
Servicer-Initiated
Temporary Suspension of
Proceedings (04/21/09)

When a delinquent mortgage loan is referred to a foreclosure attorney (or trustee), the servicer must continue working with the borrower in order to bring the mortgage loan current, develop a workout plan, or finalize some other foreclosure prevention alternative—unless the servicer has determined that a workout plan or foreclosure prevention alternative is not feasible. A servicer must continue to pursue these efforts up until the date of the foreclosure sale; it should not notify the attorney (or trustee) to “place on hold” or suspend the foreclosure proceedings unless it has actually received funds to fully reinstate the mortgage loan or has agreed to delinquency workout arrangements with the borrower. Foreclosure proceedings also may not be temporarily suspended pending Fannie Mae’s approval of additional attorney fees. In addition, the servicer should not put a case on hold when a case is being transferred from its foreclosure department to its bankruptcy department (or later, if a lift of automatic stay is granted, when the case is being transferred back to its foreclosure department).

In any instance in which a temporary suspension of foreclosure proceedings is being contemplated, the servicer must take into consideration the length of the foreclosure proceedings in the state in which the property is located and the costs that have been—or are about to be—incurred. (It is not necessary to take these factors into consideration for federally mandated suspensions under the Servicemembers Civil Relief Act or any state law that similarly restricts the right to foreclose.) If significant costs have already been incurred, there is probably little benefit to temporarily suspending the proceedings, especially if the foreclosure sale is not imminent. Even when the sale is imminent, the servicer must consider how long it will take to reschedule the sale and what additional

costs (such as advertising) will be incurred as a result of the postponement. The servicer also must consider whether the borrower is willing to contribute any resulting or duplicative costs to postpone the foreclosure sale. Since it may be possible to “unwind” a foreclosure sale should the borrower reinstate or enter into an approved workout arrangement, the servicer should not cancel or postpone a foreclosure sale without first discussing this possibility with the attorney (or trustee).

After a thorough analysis, if the servicer decides that it is appropriate or necessary to temporarily suspend the foreclosure proceedings, it may do so for the minimum period the jurisdiction allows or no greater than 30 days. At the end of the initial suspension period, the servicer must specifically instruct the attorney (or trustee) to keep suspension in effect, if appropriate, and also provide status of workout. (A temporary suspension in foreclosure proceedings should never extend beyond a total of 60 days.) If the servicer fails to instruct the attorney (or trustee) to continue the suspension period, the attorney (or trustee) must resume the foreclosure proceedings—unless the mortgage loan has been fully reinstated or a workout agreement with the borrower has been reached.

The foregoing limitations apply only to suspensions initiated by the servicer without Fannie Mae’s approval and do not apply to suspensions required by Fannie Mae pursuant to the Home Affordable Modification Program (HAMP) or otherwise. (Refer to [Part VII, Section 610.04.04, Temporary Suspension of Foreclosure Proceedings.](#))

Section 105.02
Communication
Regarding Workout
Agreements (01/31/03)

The servicer must keep the attorney (or trustee) advised about the status of relevant negotiations for repayment plans and must consult with the attorney (or trustee) before it actually enters into a written workout agreement in order to make sure that the foreclosure proceedings are not impaired in the event that they have to be resumed. (All repayment plans that extend for six or more months must be in writing.) In many judicial foreclosure states, the *status quo* can only be preserved if a stipulation that includes the requisite language is filed with the court. In some states, the judge may dismiss the case for “lack of prosecution” if the repayment plan is not filed with the court as part of the foreclosure proceedings. If this happens and the borrower subsequently defaults under the repayment plan, the foreclosure proceedings will have to be restarted, which will result in doubling the foreclosure fees and expenses. In such cases, Fannie Mae

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will not reimburse the servicer for the resulting additional fees and expenses.

**Section 105.03
Bankruptcy Referrals
(01/31/03)**

When the servicer becomes aware of a bankruptcy filing in connection with a mortgage loan that has already been referred to a foreclosure attorney (or trustee), the servicer must contact the foreclosure attorney (or trustee) within one business day after it learns of the bankruptcy filing. The Fannie Mae–retained attorney to whom a foreclosure referral is made will handle any resulting bankruptcy case. If a foreclosure referral was made prior to the time Fannie Mae identified retained attorneys for a jurisdiction, the attorney to whom the foreclosure was referred may handle any subsequent bankruptcy case that is filed before completion of the foreclosure or reinstatement of the mortgage loan if the servicer concludes that the attorney has the necessary qualifications.

If a mortgage loan has been referred to a foreclosure trustee in a jurisdiction in which Fannie Mae has retained attorneys, the servicer must refer the case to an attorney on the Retained Attorney List within one business day of learning of the bankruptcy filing. If the mortgage loan has been referred to a foreclosure trustee in a jurisdiction in which Fannie Mae does not have retained attorneys, the servicer must refer the case to a qualified and experienced attorney of the servicer's choice within one business day of learning of the bankruptcy filing.

**Section 105.04
Bidding Instructions
(01/31/03)**

The servicer must pay particular attention to any bidding requirements issued by FHA, VA, RD, or the mortgage insurer to make sure that Fannie Mae will not be prevented from recovering the full amount due it under the insurance or guaranty contract. The servicer should not issue bidding instructions to the foreclosure attorney (or trustee) if its preforeclosure property inspection reveals (or the servicer otherwise discovers) that the property has incurred significant hazard damage (but a claim has not been filed with the insurance carrier). Instead, the servicer must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 to determine whether or not a hazard insurance claim should be filed and, if so, what foreclosure bid should be entered. In any instance in which a hazard or flood insurance claim had been filed, the servicer may issue the bidding instructions without contacting Fannie Mae, as long as it instructs the foreclosure attorney (or trustee) to reduce the otherwise applicable final

bid amount by the amount of the outstanding hazard or flood insurance claim.

A. FHA-insured mortgage loans. The amount to be bid for an FHA-insured mortgage loan depends on when the mortgage loan was endorsed for insurance. For FHA mortgage loans endorsed for insurance before 11/30/83, the bid amount must include the full amount of the indebtedness. This consists of the unpaid balance, accrued interest to the date of the sale (using the rate in effect for each payment on the date it became due), any advances for T&I, and other foreclosure costs (including attorney fees and any reimbursable property inspection fees). Any funds that the servicer is holding for a mortgage loan insured under an FHA Escrow Commitment or for a mortgage loan that is subject to an interest rate buydown plan must be subtracted from the total indebtedness. (The servicer must send Fannie Mae any funds it holds as soon as the foreclosure sale is held.)

For FHA mortgage loans endorsed for insurance on or after 11/30/83, the bid amount may vary depending on whether HUD elects to have the property appraised. When HUD has the property appraised, it will advise the servicer of the amount that should be bid at the foreclosure sale. The bid amount will reflect the fair market value of the property, appropriately adjusted for HUD's estimate for holding costs and resale costs that it would incur if the property were conveyed. As long as the servicer receives HUD's bid amount within the five days before the foreclosure sale, it must bid the exact amount specified by HUD—unless state law requires a higher amount to be bid. If the servicer does not receive HUD's bid amount in sufficient time, it must bid the full amount of Fannie Mae's indebtedness.

B. VA-guaranteed mortgage loans. For VA mortgage loans, the bid must be the amount that VA specified as its "upset price." If VA did not specify an upset price—and Fannie Mae has not authorized a VA no-bid buydown (as discussed in *Part VII, Section 607*)—the bid amount must be determined by subtracting the amount the VA will pay under its guaranty from the amount required to satisfy the indebtedness.

C. RD-guaranteed mortgage loans. For RD mortgage loans, the bid amount must include the full amount of the indebtedness. This consists of the unpaid balance, accrued interest to the date of the sale, any advances

for T&I, and other foreclosure costs (including attorney's fees and any reimbursable property inspection fees).

D. Conventional mortgage loans. The servicer must contact its Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 to obtain bidding instructions for all conventional second mortgage loans and for cooperative share loans that are in a first-lien position. For all other first mortgage loans, the servicer must issue bidding instructions based on the following guidelines, which are designed to ensure that a third party's bidding at the foreclosure sale will not result in Fannie Mae's eventually acquiring the property for more than the total mortgage indebtedness or for less than Fannie Mae's "make whole" amount.

- The total mortgage indebtedness is the sum of the UPB of the mortgage loan, accrued interest, advances for T&I, foreclosure costs, and attorney's fees.
- Fannie Mae's "make whole" amount is the total mortgage indebtedness less the amount of any mortgage insurance coverage.

Fannie Mae's bidding instructions take into consideration whether or not (1) the mortgage loan is insured, (2) the property is located in a state (or jurisdiction) that has a redemption period in which the borrower (or a junior lienholder) can redeem the property for the amount of the foreclosure bid, (3) the property is located in a state (or jurisdiction) that does not have a redemption period, but which levies transfer taxes and/or other related fees and costs on the winning bidder at the foreclosure sale, and (4) the property is located in a state (or jurisdiction) that recognizes Fannie Mae's exemption from the payment of real estate transfer taxes. (A servicer may obtain an opinion of value for the property to use in establishing the foreclosure bid; however, Fannie Mae will not reimburse the servicer for the cost for obtaining the value opinion unless Fannie Mae specifically instructs the servicer to obtain such an opinion.)

- **Uninsured conventional first mortgage loan.** The servicer must instruct the foreclosure attorney (or trustee) to bid 100 percent of the total mortgage indebtedness if (1) the security property is located in a state (or jurisdiction) that has a redemption period or (2) the security property is located in a state (or jurisdiction) that does not have a

redemption period and does not levy transfer taxes or other related fees and costs on the winning foreclosure bid (or levies transfer taxes to which Fannie Mae's real estate transfer tax exemption applies).

However, if the security property is located in a state (or jurisdiction) that does not have a redemption period, but which levies transfer taxes or other related fees and costs on the winning foreclosure bid (and does not recognize Fannie Mae's exemption from paying real estate transfer taxes), the servicer must instruct the foreclosure attorney (or trustee) to enter an initial bid of \$100 (or any other minimum amount that the state requires in order for the bid to be considered valid). The attorney (or trustee) must be instructed to continue bidding until it either wins the bidding or bids an amount equal to 100 percent of the total mortgage indebtedness. If the bid amount cannot be increased because the trustee conducting the foreclosure is prohibited from accepting a range of bids from a single bidder, the servicer must instruct the foreclosure attorney (or trustee) to bid the total mortgage indebtedness.

- **Insured conventional first mortgage loan that is secured by a property located in a state (or jurisdiction) that has a redemption period.** The servicer must instruct the foreclosure attorney (or trustee) to bid 100 percent of the total mortgage indebtedness—unless the mortgage insurer instructs otherwise. If the mortgage insurer indicates that the bid should be an amount that is less than Fannie Mae's make whole amount, the servicer must instruct the foreclosure attorney (or trustee) to bid Fannie Mae's make whole amount.
- **Insured conventional first mortgage loan that is secured by a property located in a state (or jurisdiction) that does not have a redemption period and does not levy transfer taxes or other related fees and costs on the winning foreclosure bid (or levies transfer taxes to which Fannie Mae's real estate transfer tax exemption applies).** The servicer must instruct the foreclosure attorney (or trustee) to enter an initial bid of 80 percent of the total mortgage indebtedness and to continue bidding, if necessary, until it either wins the bidding or bids an amount equal to 100 percent of the total mortgage indebtedness—unless the mortgage insurer instructs otherwise. If the bid amount cannot be increased because the trustee conducting the foreclosure is prohibited from accepting a range of bids

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from a single bidder, the servicer must instruct the foreclosure attorney (or trustee) to bid the greater of Fannie Mae's make whole amount or the amount specified by the mortgage insurer.

- **Insured conventional first mortgage loan that is secured by a property located in a state (or jurisdiction) that does not have a redemption period, but which levies transfer taxes or other related fees and costs on the winning foreclosure bid (and does not recognize Fannie Mae's exemption from paying real estate transfer taxes).** The servicer must instruct the foreclosure attorney (or trustee) to enter an initial bid of \$100 (or any other minimum amount that the state requires in order for the bid to be considered valid) and to continue bidding until the bid is won (as long as the bid does not exceed 100 percent of Fannie Mae's total mortgage indebtedness)—unless the mortgage insurer instructs otherwise. If the bid amount cannot be increased because the trustee conducting the foreclosure is prohibited from accepting a range of bids from a single bidder, the servicer must instruct the foreclosure attorney (or trustee) to bid the greater of Fannie Mae's make whole amount or the amount specified by the mortgage insurer. If the mortgage insurer specifies a bid amount that will result in Fannie Mae's paying unnecessarily higher transfer taxes or other avoidable fees and costs that are based on the foreclosure bid amount, the servicer must instruct the attorney (or trustee) to enter an initial bid of \$100 (or any other minimum amount that the state requires in order for the bid to be considered valid) and to continue bidding until it either wins the bidding or bids an amount equal to Fannie Mae's make whole amount (but, if a range of bids cannot be accepted from a single bidder, the foreclosure attorney [or trustee] must be instructed to bid the greater of Fannie Mae's make whole amount or the amount specified by the mortgage insurer).

Section 105.05
Suspension or Reduction
of Redemption Period
(09/30/05)

Under the terms of the Servicemembers Civil Relief Act, any statutory redemption period will stop running during a service member's active duty and will resume after his or her separation from active duty. This is true even if the foreclosure took place before the service member began active duty, as long as the redemption period had not expired by the date he or she reported for duty. During the time the redemption period is suspended, the servicer must permit the service member's dependents to continue living in the property, paying a reasonable rent, if they were in residence

at the time of the foreclosure. In such instances, the servicer must notify Fannie Mae's National Property Disposition Center about the suspension of the redemption period until after the completion of the borrower's active duty so that Fannie Mae can adjust its marketing efforts for the property. (also see *Part III, Chapter 1, Exhibit 1*)

Some states allow redemption periods to be shortened if the property is vacant or abandoned. Whenever possible and economically feasible, the servicer must petition the court—or take any other legal actions that may be necessary—for a reduced redemption period, so that expenses and delay can be minimized.

Section 105.06
Title Evidence (09/30/05)

To facilitate continuity in the transition of files from foreclosure through REO closing when a referral is made to a trustee in Arizona, California, Nevada, or Washington, the servicer must require that the trustee obtain evidence of title for the foreclosure from a title company that appears on the Approved Title Company List for Foreclosure Evidence of Title posted on eFannieMae.com. The title company chosen will subsequently represent Fannie Mae's interests as seller in connection with the REO closing.

In Hawaii, Fannie Mae requires the servicer to obtain an owner's title policy after the foreclosure sale if Fannie Mae acquires title to a property through a non-judicial foreclosure. The servicer should not obtain an owner's title policy after the foreclosure sale in any other state unless Fannie Mae specifically directs it to do so. Fannie Mae will accept other forms of title evidence as long as FHA, VA, RD, or the mortgage insurer does not specifically require an owner's title policy. Fannie Mae will not reimburse the servicer for the cost of an owner's title policy unless Fannie Mae or the mortgage insurer directs it to obtain one.

Section 105.07
Pursuit of Deficiency
Judgment (01/31/03)

The servicer must pursue a deficiency judgment for an FHA, VA, or RD mortgage loan if instructed to do so by HUD, VA, or the RD, respectively. A servicer should not automatically pursue a deficiency judgment for an insured conventional mortgage loan since the provisions of the mortgage insurance policy will govern the decision of whether (and how) a deficiency judgment should be pursued. A deficiency judgment cannot be pursued for a Texas Section 50(a)(6) mortgage loan. Fannie Mae will make the decision about whether to pursue a deficiency judgment for all other uninsured conventional mortgage loans.

Fannie Mae's National Servicing Organization will make the decisions regarding deficiency claim preservation or waiver for uninsured mortgage loans. In jurisdictions where the preferred or routine method of foreclosure is non-judicial, the servicer generally must proceed non-judicially even if doing so means waiving Fannie Mae's right to pursue a deficiency judgment, unless the servicer or its attorney is aware of circumstances that suggest the benefits of proceeding judicially outweigh the increase in time frame, fees, and costs. In such instances, or if servicers have questions regarding the preservation or waiver of deficiency claims, servicers must contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicing Solution Center at 1-888-326-6438 for guidance, including direction to proceed judicially on a case-by-case basis.

Fannie Mae requires the servicer to promptly communicate to either the mortgage insurer or Fannie Mae (depending on whether the mortgage loan is insured or uninsured) any information it may have to assist in deciding whether to pursue a deficiency judgment. Fannie Mae also requires the servicer to advise Fannie Mae about any information it receives from the mortgage insurer concerning whether the deficiency judgment is to be pursued solely or jointly. Although Fannie Mae may subsequently assume the responsibility for communicating directly with the mortgage insurer while the deficiency is being pursued, it is important that the servicer keep Fannie Mae informed about the mortgage insurer's intentions (particularly since the mortgage insurer may not be aware of Fannie Mae's ownership interest in the mortgage loan when it is making the decision to pursue a deficiency). For an uninsured mortgage loan, Fannie Mae requires the servicer to cooperate and assist Fannie Mae in the pursuit of a deficiency in accordance with the instructions Fannie Mae provides for each particular case.

**Section 106
Property Maintenance
and Management
(02/24/09)**

Throughout the foreclosure process, the servicer is responsible for performing all property maintenance functions to ensure that the condition and appearance of the property are maintained satisfactorily. This includes securing the property, mowing the grass, removing trash and other debris that violate applicable law or pose a health or safety hazard, winterizing the property, etc. The servicer must manage the property until it is conveyed to the insurer or guarantor or until Fannie Mae assigns that responsibility elsewhere. The servicer must take whatever action is necessary to protect the value of the property. This includes making sure

that no apparent violations of applicable law are occurring on the property (such as violations of laws relating to illegal narcotics and similar substances) and that the property is protected against vandals and the elements.

In particular, the servicer must take the following actions:

- Contact Fannie Mae's National Property Disposition Center to determine whether utility services should be continued. Generally, the utilities should be left on unless the property is expected to be vacant for an extended period of time, and even then, the heating source may be left on to prevent damage in cold weather areas. However, the varying weather conditions in different parts of the country and the conditions and circumstances that exist when the property is acquired must be considered in the decision on the continuation of the utility services.
- Secure a vacant property, by changing exterior locks, securing all windows and exterior doors, repairing fences, and otherwise securing potentially dangerous areas and facilities (such as swimming pools) against entry or use by children or others who could be harmed. Properties should not be boarded unless absolutely necessary to prevent vandalism or secure the property or where required by law. (In those areas in which Fannie Mae has arranged for master keying services, the servicer must use the designated security firms to perform these services.)
- Notify Fannie Mae about any damage to the property, any injury to a person on the property, any conditions that could result in injury to someone who enters the property, or any other condition or occurrence that should be brought to Fannie Mae's attention (particularly if Fannie Mae may need to file a claim under its general liability insurance policy).

Servicers should refer to the Fannie Mae Property Preservation Matrix and the *Property Maintenance & Management Reference Guide* on eFannieMae.com for the allowable amounts for property preservation work. Where the cost of the contemplated preservation work exceeds Fannie Mae allowables, the *Property Preservation Request for Repair (Form 1095)* must be completed and submitted with supporting

photographic documentation and all other pertinent supporting information to property_preservation@fanniemae.com. All pertinent supporting information that would assist Fannie Mae in making a sound property preservation decision must be included in the request for repair.

Once the request for repair is received, Fannie Mae will determine if other bids are necessary. Once a decision has been made, an e-mail will be sent to the servicer at the e-mail address provided on the request for repair indicating that additional bids are necessary or stating the approved amount for the preservation work.

Following the foreclosure sale, Fannie Mae will designate a broker, agent, or property management company to handle the property maintenance functions.

**Section 107
Eviction Proceedings
(01/31/03)**

A foreclosure attorney (or trustee) must include certain language in the foreclosure complaint, judgment, pleadings, or other documentation in any state (or jurisdiction) in which the inclusion of such language will facilitate or execute the eviction process without causing an appreciable delay in the foreclosure. Fannie Mae requires the foreclosure attorney (or trustee) to do this work as an integral part of the foreclosure process (without charging an additional fee).

Fannie Mae will initiate eviction proceedings and select and monitor the eviction attorney in connection with any property for which Fannie Mae has the property disposition responsibility—conventional mortgage loans that Fannie Mae held in its portfolio, government mortgage loans that Fannie Mae held in its portfolio and which cannot be conveyed to the insurer or guarantor, and government or conventional mortgage loans that were part of an MBS pool (including any that had a shared-risk special servicing option under which Fannie Mae would be responsible for property disposition efforts). Fannie Mae will notify the servicer of its selection by sending the servicer a copy of the referral letter it sends to the designated eviction attorney. Based on the occupancy status information the servicer provides in the *REOgram*®, Fannie Mae will advise its designated attorney whether it will be necessary to initiate eviction proceedings. Fannie Mae's designated attorney will then contact the servicer (or the foreclosure attorney, if the foreclosure was conducted by a Fannie Mae-retained attorney) to request any documents needed to initiate the eviction proceedings. The servicer (or the foreclosure attorney) must

immediately provide the necessary documentation to ensure that the initial “notice to vacate” can be served as soon as possible after the date of the property acquisition. After that, the servicer must return any documentation the eviction attorney subsequently requests as soon as possible (or request a servicer-retained foreclosure attorney to provide the documents directly to the eviction attorney within three business days). When requested, the servicer must work with the eviction attorney to schedule the actual eviction.

In any instance in which the servicer has the responsibility for disposing of an acquired property—government mortgage loans that will be conveyed to the insurer or guarantor and conventional mortgage loans that were part of an MBS pool that had a shared-risk special servicing option under which the servicer would be responsible for property disposition efforts—the servicer (or its retained attorney) must handle the eviction proceedings. When the servicer retains an attorney to handle the eviction proceedings, it must pay the eviction attorney promptly on receipt of a billing for attorney fees and eviction costs and, at the appropriate time, file the applicable IRS Form 1099-MISC (*Miscellaneous Income*) with the Internal Revenue Service. (The servicer must contact Fannie Mae’s National Property Disposition Center to obtain Fannie Mae’s maximum allowable eviction fees and costs for a particular state.) If applicable, the servicer must file a supplemental claim for any eviction fees and costs that are claimable under the mortgage insurance claim. The servicer may request reimbursement for its payment of eviction attorney’s fees and related costs from Fannie Mae by submitting a *Cash Disbursement Request* ([Form 571](#)). The servicer must aggressively monitor the eviction attorney to ensure that Fannie Mae obtains possession of the property promptly. Fannie Mae may impose sanctions (including daily compensatory fees) if there are unwarranted delays in processing these cases.

**Section 108
Expenses During
Foreclosure Process
(01/31/03)**

The servicer must use any funds remaining in the borrower’s escrow deposit account to pay T&I premiums that come due during the foreclosure process. The servicer also may use escrow funds to pay costs for the protection of the security and related foreclosure costs as long as state or local laws, government regulations, or the requirements of the mortgage insurer or guarantor do not preclude the use of escrow funds for these purposes. If the escrow balance is not sufficient to cover these expenses, the servicer must advance its own funds.

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**Section 108.01
Delinquent Tax Late Fees
or Penalties (01/31/03)**

When a servicer does not maintain an escrow deposit account for a mortgage loan, the servicer may not become aware that the borrower has not paid the real estate taxes on the security property until after the taxing jurisdiction imposes a late fee or a delinquent tax penalty. To reduce the amount of advances that a servicer has to make in connection with delinquent (or foreclosed) mortgage loans for which it does not maintain an escrow deposit account, Fannie Mae will reimburse a servicer for late fees or delinquent tax penalties for the current tax period or for any tax period that ends no more than 12 months earlier than the date of the last paid installment for the mortgage loan, as well as for its advances to pay the delinquent taxes themselves.

**Section 108.02
Claims Shortfall for
Government Mortgage
Loans (09/30/05)**

Fannie Mae will reimburse the servicer of a modified special servicing option RD mortgage loan for the difference between the calculated loss and the actual RD claim payment. Generally, Fannie Mae will not reimburse the servicer in instances in which FHA or VA disallows certain costs included in the claim (because they either are not allowable expenses or exceed the maximum allowable FHA/VA limit). Fannie Mae only will reimburse the servicer for disallowed costs if the servicer requests and obtains Fannie Mae's prior approval of the expense.

A servicer must make sure that bills submitted by its legal counsel or foreclosure trustee describe each item of cost in sufficient detail to clearly identify it as being an allowable cost. The servicer must retain paid invoices to substantiate all reimbursement requests.

**Section 108.03
Other Reimbursable
Expenses (12/07/06)**

Both the servicer and the foreclosure attorney (or trustee) must make every effort to reduce foreclosure-related costs and expenses in a manner that is consistent with all applicable law. Some costs may be reduced through more efficient use of the print media. For example, in posting a legal advertisement, the foreclosure attorney (or trustee) must substitute a reference to the mortgage loan for the full legal description of the property—if doing so will not affect the validity of the foreclosure sale. Similarly, in some circumstances, costs may be managed by ensuring that an advertisement is not typeset or spaced in a manner that increases the costs with no apparent additional benefit. On-line or alternative publications may be used to reduce the costs of publication, if allowed by applicable state laws. Fannie Mae requires the servicer to minimize the costs incurred from third-party vendors—such as auctioneers or constables—by regularly examining the pricing offered by alternative

vendors and negotiating for the best value from the vendor and other qualified service providers. In addition, title costs to confirm title and identify parties entitled to notice of the foreclosure must be kept at a minimum. For example, where permitted by law, a title search or abstract must be obtained in lieu of a title commitment or Trustee Sale Guaranty, when the cost of obtaining the title search or abstract is less than the cost to obtain a title commitment or Trustee Sale Guaranty.

Fannie Mae will reimburse a servicer for Fannie Mae's share of any funds it advances for foreclosure expenses related to FHA, VA, and conventional mortgage loans (whether they are whole mortgage loans or participation pool mortgage loans held in Fannie Mae's portfolio or MBS mortgage loans serviced under the special servicing option) and those related to RD mortgage loans serviced under the special servicing option. Specifically, Fannie Mae will reimburse the servicer for any of the following out-of-pocket costs that it pays to third-party vendors or the courts, as long as the costs are actual, reasonable, and necessary (and are included in any applicable FHA, VA, RD, or mortgage insurance claim that is filed): (1) filing costs and other costs required by the courts; (2) trustee sale guarantees or other title foreclosure litigation reports; (3) actual costs for posting notices of foreclosure sales; (4) costs for publication of legal notices (reimbursable for California non-judicial foreclosures only if the notices are placed as specified below); (5) costs of announcing postponements of foreclosure sales; (6) legally mandated postal costs for certified or registered mail that is required for legal notices (for California non-judicial foreclosures, the actual cost of first class postage for such notices also is reimbursable); (7) costs of serving summonses and complaints and other legal notices for which the law requires personal service; (8) charges for brokers' price opinions (or for appraisals, if Fannie Mae instructed the servicer to obtain them) that are obtained in connection with relief provisions, foreclosure prevention alternatives, or if legally required to determine the amount of the foreclosure bid; (9) the actual cost of recording any legal documents necessary to the conduct of the foreclosure (such as notices of default, notices of sale, substitutions of trustees, assignments (with the exception of preparing or recording an assignment of the mortgage loan from MERS to the servicer or Fannie Mae), satisfaction documents, deeds, etc.); (10) the cost of an owner's extended coverage title policy, if a property is acquired by acceptance of a deed-in-lieu of foreclosure (a servicer should

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not purchase title policies for foreclosed properties unless Fannie Mae advises it to do so); (11) fees paid to a third party to perform property inspections Fannie Mae requires; and (12) other costs that Fannie Mae approves in advance or that are specifically footnoted on the standard fee schedule that appears as *Exhibit 3: Attorney's and Trustee's Fees*. Fannie Mae will not reimburse the servicer for any expense incurred in preparing or recording an assignment of the mortgage loan from MERS to the servicer or Fannie Mae. Reassigning and re-registering the mortgage with MERS is not required by Fannie Mae and any such action will be at the discretion and expense of the servicer.

Fannie Mae will reimburse the servicer its costs for publication of legal notices for California non-judicial foreclosures only if the notices are placed through one of the Daily Journal Corporation newspapers listed in *Exhibit 4: Daily Journal Corporation Newspapers for Trustee's Sale Publications* that will satisfy the state's notice requirements. If none of the newspapers listed in the *Exhibit* meet the notice requirements of California law, the trustee must select another newspaper that both will meet the notice requirements of California law and is one of the least expensive and most frequently published. Trustees must ensure that the posting and publication firm they choose prepares the necessary notices and arranges for the publication of the notices in the appropriate newspaper. When posting and publishing companies are utilizing one of the Daily Journal Corporation newspapers listed in *Exhibit 4: Daily Journal Corporation Newspapers for Trustee's Sale Publications*, the posting and publishing company must provide the Daily Journal Corporation newspaper with the applicable Fannie Mae loan number and indicate that the publication relates to a Fannie Mae referral.

Under the provisions of 12 U.S.C 1723a (c)(2), Fannie Mae is exempt from the imposition of revenue or documentary stamps (or the like) that are imposed pursuant to state law. Therefore, Fannie Mae will not reimburse a servicer for these items if it pays them.

Section 108.04
Requests for
Reimbursement
(01/31/03)

The servicer should request reimbursement for its advances by submitting a *Cash Disbursement Request* ([Form 571](#)) to Fannie Mae. A servicer generally may request reimbursement for its advances only after the claim has been filed with the insurer or guarantor. However, in states that have long redemption periods, a servicer may request an early reimbursement for tax and insurance premium payments. It also may request

reimbursement for large out-of-pocket expenses and tax and insurance payments more often if the foreclosure is contested or if lengthy bankruptcy proceedings are involved. Generally, a servicer may request these reimbursements when the expenses for an individual case have surpassed \$500 or when its advance has been outstanding for at least six months. When multiple requests for reimbursement are submitted in connection with the same mortgage loan, the servicer must submit its *final* request for reimbursement within

- 30 days after a foreclosure prevention alternative is completed;
- 30 days after the date the claim was filed, if the property will be conveyed to the insurer or guarantor;
- 30 days after a third party acquires the property at the foreclosure sale; or
- 30 days after Fannie Mae disposes of an acquired property.

If the servicer submits a request for reimbursement of advances after the date Fannie Mae specifies for the submission of the “final” [Form 571](#), Fannie Mae may deny the request or assess a late submission compensatory fee. Any late submission compensatory fee will be individually determined by taking into consideration the severity of the delay and the frequency with which the servicer files late requests for reimbursement.

**Section 109
Accounting for Rental
Income (08/14/98)**

When the mortgage loan is “in foreclosure,” the servicer must hold any rental income it receives as unapplied funds until the mortgage loan is liquidated. The servicer must keep a record of rental income collections and disbursements so that they can be considered when the final claim under the mortgage insurance or guaranty is filed.

After the claim is filed, the servicer must remit Fannie Mae’s share of the rental income to Fannie Mae or deduct it from the amount due to reimburse the servicer for any advances it made.

**Section 110
Third-Party Sales
(01/31/03)**

In most instances, when a third party acquires a property at the foreclosure sale, he or she is only required to pay a portion of the bid amount on the date of sale and then has 30 days in which to pay the remainder of the bid

amount and otherwise comply with the terms of the sale. The servicer must collect the sales proceeds (or, if Fannie Mae's mortgage loan is in a second-lien position, the portion of the sales proceeds that is related to the second mortgage loan) and remit the amount Fannie Mae is due within five business days after it receives the final payment from the third-party bidder under the terms of the sale. If the sale falls through, the servicer must remit the third-party bidder's initial deposit to Fannie Mae within five business days after it discovers that the sale will not be finalized. In either instance, the amount that should be remitted to Fannie Mae is the sum of the UPB of the mortgage loan and interest (based on the applicable pass-through rate) for the period from the due date of the last paid installment to the later of the liquidation or settlement date. The servicer may deduct from the proceeds any foreclosure expenses that Fannie Mae has not reimbursed it for (and, if the mortgage loan was accounted for as a scheduled/actual or scheduled/scheduled remittance type, its delinquency advances). If the sales proceeds are not sufficient for the servicer to reimburse itself for all of its expenses, the servicer may not "net" any of its expenses from the proceeds, but should instead submit a *Cash Disbursement Request* ([Form 571](#)) to request reimbursement for the expenses. The servicer should not submit any sales proceeds that remain after Fannie Mae has been paid the amount it is due—and after the servicer has been reimbursed for its expenses and advances—because these proceeds must be distributed as provided for under local statutory requirements.

The servicer must remove the mortgage loan from Fannie Mae's active accounting records or the MBS pool in the reporting period for the month in which the foreclosure sale occurred, by reporting an Action Code 71 to Fannie Mae's investor reporting system in the activity report it transmits to Fannie Mae for that month. The proceeds from the sale must be reported as a "special remittance." The servicer must forward a copy of the closing statement—showing a breakdown of principal, interest, servicing fee, outstanding advances, and any other items to the date of the sale—to Fannie Mae's National Property Disposition Center on the same day that it remits the funds to Fannie Mae.

If the servicer is maintaining an escrow deposit account to pay the hazard (and, if applicable, flood) insurance premium, it also must cancel the insurance policy and notify the third-party purchaser of the cancellation.

Any premium refunds (minus any portion that may be required to reimburse Fannie Mae or the servicer for advances Fannie Mae made) must be disbursed as follows:

- For FHA mortgage loans, payment must be made to the third-party purchaser; and
- For VA, conventional, or RD mortgage loans, payment must be made to the borrower.

For VA mortgage loans, the servicer must file a claim under the guaranty if the third party's bid was more than VA's "upset price," but less than the total indebtedness. A servicer also may file a claim under FHA's claim without conveyance procedure for an FHA mortgage loan that was endorsed for insurance on or after 11/30/83.

**Section 111
Hazard Insurance
Coverage (01/31/03)**

The servicer's action regarding the continuation or cancellation of hazard insurance coverage will depend on the type of mortgage loan that was liquidated, and on whether the property will be conveyed to the insurer or guarantor.

Fannie Mae uses a property recovery firm—Dimont and Associates—to perform postforeclosure property inspections and assume all responsibilities for filing any necessary hazard insurance claims for loss for (1) conventional first mortgage loans, (2) conventional second mortgage loans for which Fannie Mae either had an ownership interest in the first mortgage loan or paid off the first mortgage loan in connection with the foreclosure of the second mortgage loan, (3) FHA or VA mortgage loans that cannot be conveyed to the insurer or guarantor, and (4) RD-guaranteed mortgage loans serviced under the special servicing option. As soon as Fannie Mae receives the servicer's *REOgram* notifying it about the acquisition of a property that secures one of these types of mortgage loans, Fannie Mae will request a real estate broker to prepare a broker's price opinion and a list of needed repairs (including the estimated costs). When Fannie Mae receives this information, it will notify the property recovery firm about the property acquisition and the estimated costs of any repairs. At that time, the property recovery firm may contact the servicer to obtain information about the hazard insurance policy and carrier and recent property inspections that the servicer made. The property recovery firm will then inspect the property (if necessary),

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consider the amount of the estimated repairs, and assess Fannie Mae's right to receive claim payments from the hazard insurance carrier (or any other liable parties).

When Fannie Mae uses a property recovery firm, the servicer will be responsible for providing all requested information or documentation to the property recovery firm within ten days. The servicer also has the responsibility for taking appropriate actions related to the hazard insurance policy for an acquired property that was secured by a second mortgage loan if, in connection with the second mortgage loan foreclosure, Fannie Mae decides not to pay off an outstanding first mortgage loan in which it does not have an ownership interest (since Fannie Mae does not use a property recovery firm in this instance).

Section 111.01
FHA Mortgage Loans
(01/31/03)

For FHA mortgage loans that will be conveyed to HUD, the servicer must obtain an endorsement to the hazard insurance policy to reflect Fannie Mae's interests immediately following the foreclosure sale. The servicer must then cancel the insurance coverage on the date the deed to HUD is filed for record and include the amount of the refund (or an estimated refund amount if the refund has not been received) as a deduction on the FHA mortgage insurance claim. If the property cannot be conveyed to HUD, the servicer must follow the procedures described for conventional mortgage loans in *Section 111.03, Conventional First Mortgage Loans (01/31/03)*.

When the servicer receives the refund of the unearned hazard insurance premium from the hazard insurer, it must immediately remit the funds to Fannie Mae as a "special remittance." However, if Fannie Mae has not reimbursed the servicer for all of its outstanding foreclosure expenses, the servicer may keep the hazard insurance premium refund and show it as a credit on the *Cash Disbursement Request (Form 571)* that it submits to request reimbursement of its outstanding expenses for the mortgage loan.

Section 111.02
VA Mortgage Loans
(01/31/03)

For VA mortgage loans that will be conveyed to VA, the servicer must endorse the hazard insurance policy over to the VA immediately following the foreclosure sale. If the property cannot be conveyed to VA, the servicer must follow the procedures described for conventional mortgage loans in *Section 111.03, Conventional First Mortgage Loans (01/31/03)*.

**Section 111.03
Conventional First
Mortgage Loans
(01/31/03)**

Within 14 days after the foreclosure sale, the servicer must ask the hazard insurance carrier to cancel the policy (and, unless prohibited by the policy or applicable law, to send it any unearned premium refund). If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's mortgagee interest in the policy (and removal of its name from the policy since it will no longer be responsible for paying renewal premiums.)

If the property recovery firm's postforeclosure property inspection reveals insured hazard damage, it will file a claim with the hazard insurance carrier. All claim settlements will be sent to the property recovery firm. The property recovery firm will track activities related to the claim, monitor the hazard insurance carrier's claim settlement process, initiate follow-ups with the insurance carrier (when appropriate), and pursue appropriate proceedings related to disputed claims.

As soon as the servicer receives the unearned premium refund from the insurer, it must remit the funds to Fannie Mae as a "special remittance." However, if the servicer has outstanding foreclosure expenses that Fannie Mae has not reimbursed it for, the servicer may "net" the unearned premium refund out of the next *Cash Disbursement Request* ([Form 571](#)) that it submits for that mortgage loan. If, for any reason, a hazard insurance carrier refuses to return the unearned premium refund to the servicer, the servicer must either include a comment to that effect when it submits its final [Form 571](#) or contact Fannie Mae's National Property Disposition Center to give Fannie Mae the name of the insurance carrier and the reason the refund has not been sent to the servicer.

When a servicer requests reimbursement for a hazard insurance premium that it has advanced for an acquired property, Fannie Mae will calculate the amount of unearned premium refund that should be due. Then, if the servicer's final [Form 571](#) does not reflect the unearned premium refund as a credit or explain why the hazard insurance carrier has not sent the servicer the unearned premium refund—and the servicer has not previously remitted the refund to Fannie Mae as a "special remittance"—Fannie Mae will consider its calculated unearned premium refund amount as an unremitted refund that it is still due. Each month, Fannie Mae will send the servicer a billing statement for all of the outstanding unearned premium refunds it owes Fannie Mae. The servicer must then take

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**Section 111.04
Conventional Second
Mortgage Loans
(01/31/03)**

appropriate steps either to remit the premium refund(s) to Fannie Mae or to provide the National Property Disposition Center with an explanation of why the refund(s) will not be remitted.

The action that the servicer of a conventional second mortgage loan should take is a factor of whether Fannie Mae has an ownership interest in both the first and second mortgage loans and, if Fannie Mae does not, on whether Fannie Mae chose to pay off the first mortgage loan in connection with the foreclosure of the second mortgage loan.

A. Property recovery firm has claim-filing responsibility. The property recovery firm will be responsible for the postforeclosure inspection of an acquired property that secured a second mortgage loan (if Fannie Mae had an ownership interest in both the first and second mortgage loans or if Fannie Mae, in connection with the second mortgage loan foreclosure, chose to pay off a first mortgage loan in which Fannie Mae did not have an ownership interest) and for the filing of any applicable hazard insurance claim on Fannie Mae's behalf.

- If Fannie Mae had an ownership interest in both the first and second mortgage loans, the property recovery firm will notify the first mortgage servicer (rather than the second mortgage servicer). Within 14 days after foreclosure, the first mortgage servicer must ask the hazard insurance carrier to cancel the policy and, unless prohibited by the policy or applicable law, to send it any unearned premium refund. If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's mortgagee interests in the policy (and the removal of its name from the policy since it will no longer be responsible for paying renewal premiums).
- If Fannie Mae did not have an ownership interest in the first mortgage loan and chose to pay it off in connection with the second mortgage loan foreclosure, the property recovery firm will notify the second mortgage servicer. The second mortgage servicer's responsibilities related to the hazard insurance policy will have begun when title to the property was acquired at the foreclosure sale.

As soon as the servicer (either the first mortgage servicer or the second mortgage servicer) receives the unearned premium refund from the

insurer, it must remit the funds to Fannie Mae as a “special remittance.” However, if the servicer has outstanding foreclosure expenses that Fannie Mae has not reimbursed it for, the servicer may “net” the unearned premium refund out of the next *Cash Disbursement Request* ([Form 571](#)) that it submits for that mortgage loan. If, for any reason, a hazard insurance carrier refuses to return the unearned premium refund to the servicer, the servicer must either include a comment to that effect when it submits its final [Form 571](#) or contact Fannie Mae’s National Property Disposition Center to give Fannie Mae the name of the insurance carrier and the reason the refund has not been sent to the servicer.

When a servicer requests reimbursement for a hazard insurance premium that it has advanced for an acquired property, Fannie Mae will calculate the amount of unearned premium refund that should be due. Then, if the servicer’s final [Form 571](#) does not reflect the unearned premium refund as a credit or explain why the hazard insurance carrier has not sent the servicer the unearned premium refund—and the servicer has not previously remitted the refund to Fannie Mae as a “special remittance”—Fannie Mae will consider its calculated unearned premium refund amount as an unremitted refund that it is still due. Each month, Fannie Mae will send the servicer a billing statement for all of the outstanding unearned premium refunds it owes Fannie Mae. The servicer must then take appropriate steps either to remit the premium refund(s) to Fannie Mae or to provide the National Property Disposition Center with an explanation of why the refund(s) will not be remitted.

B. First and second mortgage servicers coordinate claim-filing responsibility. When Fannie Mae, in connection with the second mortgage loan foreclosure, chose not to pay off an outstanding first mortgage loan in which Fannie Mae did not have an ownership interest, the second mortgage servicer will be responsible for the postforeclosure property inspection (and for assisting the first mortgage servicer should it need to file a claim). If Fannie Mae does not pay off the first mortgage loan in connection with a second mortgage loan foreclosure, Fannie Mae will acquire title to the property subject to the first lien, and thus will become the “mortgagor.” In such cases, the second mortgage servicer (acting in a coordinated effort with the first mortgage servicer) must request the hazard insurance carrier to cancel Fannie Mae’s second mortgagee interest in the policy and to show instead that Fannie Mae is the

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named insured. As the new owner of the property, Fannie Mae is responsible for making the monthly mortgage payments to the first mortgage servicer and for maintaining hazard insurance coverage for the property. However, Fannie Mae has the right to market and sell the property at any time. The first mortgage servicer maintains the hazard insurance policy on the property owner's behalf, thus (as named insured) Fannie Mae will receive the benefit of any claim proceeds the first mortgage servicer applies toward repair of the property or reduction of the outstanding mortgage debt.

Since the second mortgage servicer will have sent an *REOgram* to notify Fannie Mae about the property acquisition, the property recovery firm may contact the second mortgage servicer if the property appears on the list of acquired properties that it receives from Fannie Mae. In such cases, the second mortgage servicer must advise the property recovery firm that the first mortgage servicer is responsible for the hazard insurance policy (including filing any required claim) since the first mortgage loan was not paid off in connection with the foreclosure of the second mortgage loan. This will enable the property recovery firm to remove the property from its list of active cases. All future communications related to the property or the hazard insurance policy will then take place between Fannie Mae and the first mortgage servicer.

Section 111.05
Rural Development
Mortgage Loans
(04/01/99)

For RD mortgage loans serviced under the modified special servicing option or the regular servicing option, the servicer's decision about canceling the hazard insurance policy or Fannie Mae's mortgagee interest in it must be made in accordance with RD requirements. For RD mortgage loans serviced under the special servicing option, the servicer must follow the procedures described for conventional mortgage loans in *Section 111.03, Conventional First Mortgage Loans (01/31/03)*.

Section 112
Flood Insurance
Coverage (04/01/99)

The action the servicer takes regarding the continuation or cancellation of flood insurance coverage will depend on the lien position of the mortgage loan and on whether or not there is claimable flood damage to the property. The servicer is responsible for performing any required postforeclosure property inspection and for filing any necessary flood insurance claims. The servicer generally does not need to conduct a postforeclosure property inspection if its preforeclosure inspection for a property that is covered by a flood insurance policy does not reveal any damage that would be claimable under the flood insurance policy. However, when the servicer

believes that a flood-related event that occurs after its preforeclosure property inspection could have resulted in claimable damage to the property, the servicer must make a postforeclosure property inspection (within 15 days after the property is acquired) to determine whether such damage exists. Fannie Mae will reimburse the servicer for the cost of this property inspection. (A second mortgage servicer is not required to make a postforeclosure property inspection under any circumstance if Fannie Mae acquires the property subject to an existing first mortgage loan in which Fannie Mae has no ownership interest.)

A. Preforeclosure inspection reveals no claimable damage. If the servicer's preforeclosure inspection for a property secured by a first mortgage loan does not reveal any claimable damage under the flood insurance policy, the servicer should not take any action related to the property until after the foreclosure sale. (However, if a flood-related event occurs between the date of the servicer's preforeclosure property inspection and the date the property is acquired, the servicer must inspect the property and, if appropriate file a claim for damages in accordance with B. below.) Immediately following the foreclosure sale, the servicer must notify the flood insurance carrier to cancel the policy (and, unless prohibited by the policy or applicable law, to send it any unearned premium refund). If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's mortgagee interest in the policy—and removal of the servicer's name from the policy since it will no longer be responsible for paying the renewal premiums.

If a second mortgage servicer's preforeclosure inspection does not reveal any claimable damage under the flood insurance policy, the servicer must notify the flood insurance carrier to cancel Fannie Mae's second mortgagee interest as soon as the property is acquired. If the second mortgage servicer is responsible for paying the flood insurance premiums, it must also ask the insurer to send it any unearned premium refund, unless prohibited by the policy or applicable law. (Note: If Fannie Mae has an ownership interest in both the first and second mortgage loans, the first mortgage servicer must send the notification for both mortgage loans and assume responsibility for receiving and remitting the unearned premium.) A second mortgage servicer may need to pursue a different course of action when Fannie Mae acquires title to the property subject to an

outstanding first mortgage loan in which Fannie Mae had no ownership interest and chose not to pay off that mortgage loan. In this instance, the required action will depend on whether or not the first mortgage servicer required flood insurance coverage on the property:

- If the first mortgage servicer required flood insurance coverage, the second mortgage servicer must advise the flood insurance carrier to remove Fannie Mae's second mortgagee interest and to show instead that Fannie Mae is the named insured. The first mortgage servicer will decide on the appropriate action related to the flood insurance coverage; therefore, the second mortgage servicer will have no further responsibilities related to that coverage.
- If the first mortgage servicer did not require flood insurance coverage, the policy will cover only the second mortgage loan amount and Fannie Mae will have the only mortgagee interest in the policy. In such cases, the second mortgage servicer must notify the flood insurance carrier to cancel the policy. In this situation, there is no need to reflect Fannie Mae as the named insured since Fannie Mae does not want to keep the policy in effect. The servicer must request the insurer to send it any unearned premium refund, unless prohibited by the policy or applicable law. If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's mortgagee interest in the policy—and removal of the servicer's name from the policy since it will no longer be responsible for paying the renewal premiums.

B. Property inspection reveals insured flood damage. When either a preforeclosure or postforeclosure property inspection reveals claimable damage, the servicer of a first mortgage loan must file a claim with the flood insurance carrier immediately. (When Fannie Mae has an ownership interest in both the first and second mortgage loans, the first mortgage servicer must file a combined claim for the two mortgage loans.) If, at the time the claim is filed, the property has not been acquired, the servicer should take no action related to cancellation of Fannie Mae's interest in the policy until after the property is acquired. If the property has been acquired (or as soon as it is acquired), the servicer must notify Fannie Mae's National Property Disposition Center to indicate that a claim has been filed (and then should not authorize any repairs to the property

because Fannie Mae's designated broker, agent, or property management company will be responsible for all repairs). The servicer also must ask the flood insurance carrier to cancel the policy as soon as the claim is settled and, unless prohibited by the policy or applicable law, to send it any unearned premium refund. If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's mortgagee interest in the policy—and removal of its name from the policy since it will no longer be responsible for paying the renewal premiums.

The servicer of a second mortgage loan should file a claim only if it is (or was) responsible for maintaining flood insurance coverage—either because the first mortgage servicer did not require such coverage or because the first mortgage servicer cancelled its mortgagee interest when Fannie Mae paid off the first mortgage loan in connection with Fannie Mae's foreclosure of the second mortgage loan. In instances in which the first mortgage servicer requires flood insurance coverage, the second mortgage servicer must work with the first mortgage servicer to ensure that Fannie Mae's interests (as either second mortgagee or mortgagor) are adequately protected. When the second mortgage servicer files a claim, its action will depend on whether or not Fannie Mae has acquired the property at the time the claim is filed:

- If the property has not been acquired, the servicer should take no action related to cancellation of Fannie Mae's interests in the policy until after the property is acquired. Once Fannie Mae acquires the property, the servicer must notify Fannie Mae's National Property Disposition Center to indicate that a claim has been filed (and then should not authorize any repairs to the property because Fannie Mae's designated broker, agent, or property management company will be responsible for all repairs). The servicer also must ask the flood insurance carrier to cancel the policy as soon as the claim is settled and, unless prohibited by the policy or applicable law, to send it any unearned premium refund. If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's second mortgagee interest in the policy—and removal of its name from the policy since it will no longer be responsible for paying the renewal premiums.

- If the property has been acquired, the servicer must notify Fannie Mae's National Property Disposition Center as soon as the claim is filed. The servicer should not authorize any repairs to the property because Fannie Mae's designated broker, agent, or property management company will be responsible for all repairs. The servicer also must ask the flood insurance carrier to cancel the policy as soon as the claim is settled and, unless prohibited by the policy or applicable law, to send it any unearned premium refund. If the insurance carrier is not willing to cancel the policy because Fannie Mae is not the named insured, the servicer must request cancellation of Fannie Mae's second mortgagee interest in the policy and removal of its name from the policy since it will no longer be responsible for paying the renewal premiums.

C. Remittance of settlement proceeds or unearned premium refunds.

When a servicer receives the flood insurance settlement proceeds, it must remit them to Fannie Mae as a "special remittance." When the servicer receives an unearned premium refund, it may either remit the refund to Fannie Mae as a special remittance or "net" it out of the next *Cash Disbursement Request* ([Form 571](#)) submitted for the mortgage loan. If, for any reason, a flood insurance carrier refuses to refund the unearned premium to the servicer, the servicer must either include a comment to that effect when it submits its final [Form 571](#) or contact Fannie Mae's National Property Disposition Center to give Fannie Mae the name of the insurance carrier and the reason the refund has not been sent.

When a servicer requests reimbursement for a flood insurance premium that it has advanced for an acquired property, Fannie Mae will calculate the amount of unearned premium refund that should be due. Then, if the servicer's final [Form 571](#) does not reflect the unearned premium refund as a credit or explain why the flood insurance carrier has not sent the servicer the unearned premium refund—and the servicer has not previously remitted the refund to Fannie Mae as a special remittance—Fannie Mae will consider its calculated unearned premium refund amount as an unremitted refund that it is still due. Each month, Fannie Mae will send the servicer a billing statement for all of the outstanding unearned premium refunds it owes Fannie Mae. The servicer must then take appropriate steps either to remit the premium refund(s) to Fannie Mae or

to provide the National Property Disposition Center with an explanation of why the refund(s) will not be remitted.

**Section 113
Notifying Credit
Bureaus (04/01/99)**

Each month, the servicer must notify the major credit repositories about any foreclosures that were completed (or any deeds-in-lieu of foreclosure that were accepted) during the previous month. The servicer also must report any instance in which a law enforcement agency seizes (or requires forfeiture of) a property under applicable state or federal law (See *Part III, Chapter 6*). If, for any reason, a reported transaction is “set aside” or overturned, the servicer must update the information it had reported to the credit repositories. (A listing of the major credit repositories appears in [*Part VII, Chapter 2, Exhibit 5*](#).)

**Section 114
Notice of Property
Acquisition (01/01/09)**

Once the foreclosure sale is held and the property acquired or a deed-in-lieu of foreclosure is executed, the servicer must notify Fannie Mae about the property acquisition. The servicer must submit the *REOgram* (see *Section 114.01, Submitting the REOgram (05/01/06)*) immediately after the foreclosure sale, and not wait until confirmation of the foreclosure sale has been received, nor until after expiration of any applicable redemption period. Two different notifications are required—an early warning notice that Fannie Mae has an acquired property to dispose of and the notice of the removal status code that is part of the regular monthly reporting process. Additionally, unless otherwise directed by Fannie Mae, a special servicing option MBS mortgage loan that has been foreclosed must be removed from the MBS pool no later than the remittance date following the date on which the liquidation action code was reported to Fannie Mae.

If Fannie Mae directs that the REO property relating to a foreclosed special servicing option MBS mortgage loan remain in the MBS trust after foreclosure, it must be removed from the MBS trust no later than the close of the third calendar year following the calendar year in which the MBS trust acquired the REO property. For example, if an MBS trust acquired REO property in October 2008, the REO property must be removed from the trust no later than December 31, 2011.

Note: Fannie Mae does not have any imminent plans to exercise the option to direct that the REO property remain in the MBS trust after foreclosure.

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Section 114.01
Submitting the *REOgram*
(05/01/06)

Within 24 hours after the date of a foreclosure sale (or the date a deed-in-lieu is executed), the servicer must send an *REOgram* to the National Property Disposition Center. This early warning notice is required for all conventional mortgage loans, any FHA mortgage loans that will not be conveyed to HUD, any VA mortgage loans for which VA would not establish an “upset price,” and any RD mortgage loans serviced under the special servicing option—even though Fannie Mae may not gain clear title to the property until after expiration of any redemption period. Fannie Mae may charge the servicer a \$100 compensatory fee for each day it is late in submitting the *REOgram*; Fannie Mae also may exercise any other available and appropriate remedies. Fannie Mae will not impose a compensatory fee if it determines there is a reasonable explanation for the delay.

If the security property is located in Connecticut—and the court orders a Foreclosure by Sale—the foreclosure sale may not be approved (and the conveyance deed issued) until 60 or more days after the actual foreclosure sale date. Since Fannie Mae cannot dispose of the property until after the sale is approved, the servicer should wait until the court approves the sale (and issues the deed to Fannie Mae) and then submit the *REOgram* to notify Fannie Mae about the property acquisition (within 24 hours after it learns that the foreclosure sale has been approved).

In the event a property subject to resale restrictions is acquired by Fannie Mae through foreclosure or the acceptance of a deed-in-lieu of foreclosure, and the resale restrictions survive foreclosure, the servicer must indicate that the property is subject to resale restrictions that survive foreclosure on the Fannie Mae *REOgram*. In the section of the *REOgram* titled “Comments about the Property,” the servicer must include a notation that the property is subject to resale restrictions and provide contact information for the governmental housing agency or other applicable organization. With respect to all resale restrictions, the servicer also represents and warrants that upon transfer of the property to Fannie Mae, all required notices have been given in an appropriate manner, and that the foreclosure or deed-in-lieu of foreclosure complies with the requirements of the applicable resale restrictions. With respect to resale restrictions that do not survive foreclosure (or the expiration of any applicable redemption period) or acceptance of a deed-in-lieu of foreclosure, the servicer

represents and warrants that all action necessary for the resale restrictions to terminate has been taken.

The servicer may use the *REOgram* Notification Application that is available through the *MortgageLinks* Asset Management Network to report a property acquisition on an automated basis. The servicer should prepare a *Notice of Property Acquired* ([Form 1082](#)) to ensure that it has obtained all of the required information before it sends an electronic *REOgram*. The *REOgram* must include:

1. Servicer's name and address, its nine-digit Fannie Mae identification number, and the name and telephone number of its contact person;
2. Borrower's (and, if applicable, co-borrower's) name and Social Security number;
3. Fannie Mae's loan number and the servicer's mortgage identification number;
4. Lien type—first or second;
5. Loan type—FHA, VA, conventional, or RD;
6. Loan origination date;
7. An indication of whether a hazard insurance claim is pending;
8. Last paid installment (LPI) date and the UPB;
9. Property address, including house or unit number, street name, city, county, state, and zip code; and the property's legal description (including the tax parcel identification);
10. Type of property—single-family, two- to four-unit, or unit in a condominium, planned unit development (PUD), or cooperative project;
11. Manufactured housing identification;
12. Occupancy status—vacant, owner-occupied, or tenant-occupied (if the mortgage loan is secured by an investment property, it is very

important to provide all available information, including number of units, occupancy status, names of any tenants, rental income, lease amounts, etc.);

13. Date of the foreclosure sale or the date the deed-in-lieu of foreclosure was executed;
14. The expiration date of any applicable redemption period;
15. The name of the original appraiser, the date of the appraisal, and the appraised value;
16. Date of last property inspection;
17. Mortgage insurer's name, Fannie Mae's 2-digit identification code for the mortgage insurer, the name and telephone number of the mortgage insurer's contact person, certificate number, type of coverage, coverage percentage, and the claim status and amount; and
18. Appropriate information about the first mortgage loan, if Fannie Mae's mortgage loan is in a second-lien position—the name of the first mortgage servicer, an indication of whether Fannie Mae has an ownership interest in the first mortgage loan, the mortgage insurer's name and the percent of coverage it provides, the UPB, the LPI date, and the amount of any advances the second mortgage servicer has made against the first mortgage loan.

After the servicer submits an *REOgram* to Fannie Mae, it must monitor the property's status to ensure that it files the final *Cash Disbursement Request* ([Form 571](#)) in a timely manner. Fannie Mae's *MortgageLinks* Asset Management Network includes a Property Information application that enables the servicer to view the latest status information for an individual acquired property (or for all of the acquired properties that the servicer is monitoring in a specific state). Information that is available in this application includes the broker's identification, the current property disposition status, the date of closing for a sold property, and the date of expected cancellation for the hazard insurance policy. Once the servicer is able to confirm that closing has been held for an acquired property Fannie Mae sold, it must file the final [Form 571](#) within 30 days of the closing date.

**Section 114.02
Reporting Action Codes
(09/30/05)**

The servicer must report the acquisition of a property secured by a whole mortgage loan or a participation pool mortgage loan that Fannie Mae holds in its portfolio, an MBS mortgage loan accounted for under the special servicing option, or an RD mortgage loan serviced under the special servicing option by including the appropriate action code to Fannie Mae's investor reporting system in the next activity report it transmits to Fannie Mae after the property is acquired at the foreclosure sale. It must use

- Action Code 70 when a property that was secured by an uninsured conventional mortgage loan has been acquired by foreclosure, when a property that was secured by a VA mortgage loan cannot be conveyed to VA because the VA refused to specify a bid amount, or when an RD mortgage loan serviced under the special servicing option has been acquired by foreclosure. The servicer also must use Action Code 70 to report its purchase of an acquired property after submission of the *REOgram*, if the mortgage loan has not already been removed from Fannie Mae's investor reporting records.
- Action Code 71 when a property has been condemned or acquired by a third party.
- Action Code 72 when a property has been acquired by foreclosure and is pending conveyance to FHA, VA, or the mortgage insurer.

The servicer of an MBS mortgage loan that is accounted for under the regular servicing option usually does not report these action codes because it purchases the mortgage from the MBS pool before any of these events occur. However, if the servicer chooses not to purchase the mortgage (until the time required as described in *Section 210, Settlements for MBS Regular Servicing Option Pool Mortgage Loans (06/01/07)*), it must continue to advance the scheduled payments until it receives the foreclosure claim settlement or, if the mortgage is uninsured, until after it disposes of the property. At that time, it must report the applicable action code to advise Fannie Mae to remove the mortgage from its accounting records for the MBS pool.

The servicer of an RD mortgage that is serviced under the modified special servicing option or the regular servicing option also does not report these action codes since it purchases the mortgage from Fannie Mae immediately following the foreclosure sale. The servicer must advise

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**Section 115
Notifying IRS About
Abandonments or
Acquisitions (09/30/05)**

Fannie Mae of this purchase by reporting an Action Code 65 to Fannie Mae's investor reporting system in the first activity report that it transmits to Fannie Mae following the date of the foreclosure sale.

The IRS requires that information returns be filed when Fannie Mae (or a third party) acquires an interest in a property in full or partial satisfaction of the secured debt or when Fannie Mae has reason to know that a property has been abandoned. Except as provided in *Section 115.03, Reporting via Manually Prepared Reports (09/30/05)*, a servicer must file these notices on Fannie Mae's behalf, using IRS Form 1099-A (*Acquisition or Abandonment of Secured Property*), for whole mortgage loans (including participation pool mortgage loans if Fannie Mae's percentage ownership is 50 percent or greater) that Fannie Mae holds in its portfolio, and for MBS mortgage loans (including mortgage participations if the securitized portion of the whole mortgage loan is 50 percent or greater) that are not serviced under the regular servicing option. A servicer must satisfy the reporting requirements for the "owner of record" (instead of on Fannie Mae's behalf) for participation pool mortgage loans held in Fannie Mae's portfolio if Fannie Mae's ownership interest is less than 50 percent, for mortgage participations in MBS pools if the securitized portion of the whole mortgage loan is less than 50 percent, and for most MBS mortgage loans serviced under the regular servicing option. However, if the servicer did not perform its regular servicing obligation to purchase a delinquent MBS mortgage loan before the property was acquired, the servicer must file the information return on Fannie Mae's behalf.

For purposes of filing these reports:

- Fannie Mae (or the "owner of record") acquires an interest in the property when any redemption period that follows a foreclosure sale ends without redemption rights being exercised (or when Fannie Mae accepts a deed-in-lieu of foreclosure).
- A third party—including the servicer of a first mortgage loan secured by a property that also has a subordinate lien, if the servicer bids an amount that is less than that required to satisfy both the first and the second mortgage debts—acquires an interest in the property at the foreclosure sale; and

- Abandonment occurs when the servicer has “reason to know” from “all facts and circumstances concerning the status of the property” that the borrower intended to discard or has permanently discarded the property from use.

The servicer will have an additional three months before its reporting obligation arises if it expects to begin foreclosure proceedings within the three months after it determines that abandonment has occurred.

After an event that triggers a reporting requirement occurs, IRS Form 1099-A must be filed on or before February 28 (or March 31 if filing electronically) of the year following the calendar year in which the event occurred. The servicer also must furnish the borrower with an information statement on or before January 31 of that year. The requirement for notifying the borrower can be satisfied by sending Copy B of a completed IRS Form 1099-A to the borrower’s last known address. When the form is filed on Fannie Mae’s behalf, it must show Fannie Mae’s name, address, and federal identification number (52-0883107), and include a legend stating that the information is being reported to the IRS. If it is filed by the servicer on its own behalf or for the “owner of record,” the name, address, and identification number of the servicer or owner of record, respectively, must be provided instead.

Section 115.01
Preparing IRS Form
1099-A (09/30/05)

The servicer is responsible for completing the IRS Form 1099-A accurately, for filing it with the IRS, and for providing the information to the borrower (and in some cases, as described in *Section 115.03, Reporting via Manually Prepared Reports (09/30/05)*, to Fannie Mae) by the required dates. If the IRS penalizes Fannie Mae because a servicer failed to file a return—or filed an incorrect return or late return—Fannie Mae will require the servicer to reimburse Fannie Mae for any penalty fees the IRS assesses (unless the servicer can document that it met the filing requirements).

Information that must be reported on the IRS Form 1099-A includes:

- the borrower’s taxpayer identification number (usually the Social Security number if the borrower is a natural person);
- the date of acquisition of an interest in the property or the date the servicer acquired knowledge of the abandonment;

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- the outstanding UPB of the mortgage loan;
- a general description of the property;
- the fair market value of the property at the time of acquisition (if the borrower is personally liable for the debt); and
- whether the borrower is personally liable for the debt.

**Section 115.02
Reporting via Magnetic
Media (09/30/05)**

A servicer that is able to report IRS Form 1099-A information on magnetic media must do so on Fannie Mae's behalf. Even though a servicer reports to the IRS on magnetic media, it is still responsible for providing a hard copy of the IRS Form 1099-A to the borrower (Copy B) and to those states that require it (Copy C). Copy B must be sent to the borrower no later than January 31.

The servicer does not need to send Fannie Mae a copy of the magnetic media it files with the IRS. However, to ensure that Fannie Mae can identify the servicer and specific mortgage loan numbers should the IRS contact Fannie Mae for additional information or clarification, Fannie Mae requires the servicer to

- insert the following header information when the IRS Form 1099-A is filed on Fannie Mae's behalf—Fannie Mae on the first "Payer" line and the 10-digit Fannie Mae loan number (or the MBS pool number), followed by one space and then the 9-digit identification number that Fannie Mae assigned to the servicer, on the line for the "Payer's account number for Payee;" and
- submit a Summary of IRS Form 1099-A Filing (Form 1100) to notify Fannie Mae that it reported to the IRS on magnetic media.

**Section 115.03
Reporting via Manually
Prepared Reports
(09/30/05)**

A servicer that would report IRS Form 1099-A information manually must submit the original completed form (Copy A only) to Fannie Mae in sufficient time to reach Fannie Mae by the close of business on January 31 of each year. Copy B of the form must be provided to the borrower by that same date. The servicer must either retain Copy C or submit it to the state taxing authority if that is required by state law. The servicer should not send any information related to the filing of IRS Forms 1099-A directly to the IRS.

To ensure that Fannie Mae can account for all of the servicer's IRS Forms 1099-A, the servicer must batch the forms it sends to Fannie Mae under cover of a *Summary of IRS Form 1099-A Filing* (Form 1100). The servicer must send its packages of IRS Forms 1099-A (with a return receipt requested) to

Fannie Mae
NPDC-Form 1099A Processing
P.O. Box 650043
Dallas, TX 75265-0043

The servicer may prepare the IRS Form 1099-A as soon as one of the events that triggers the reporting requirement occurs, rather than waiting until after the end of the year. By doing this, the servicer can submit the form to Fannie Mae in time to ensure that any errors are corrected in advance of Fannie Mae's deadline for filing the return.

When Fannie Mae receives a servicer's IRS Forms 1099-A, Fannie Mae will edit them to make sure that all of the required data is present and reasonable. If any of the required information is incorrect or missing (except for the missing taxpayer identification numbers for the mortgage loans specified on the Form 1100), Fannie Mae will send the servicer a report listing the errors that need to be corrected. The servicer must correct any erroneous information and return the error listing report to the above address by the date Fannie Mae specifies.

The servicer must expedite the submission of any corrections (retaining the mailing receipt as evidence that the information was provided on a timely basis). If a servicer fails to return the requested corrections to Fannie Mae by the specified date, Fannie Mae may assess a \$100 compensatory fee for each incomplete or incorrect IRS Form 1099-A that has not been corrected. Fannie Mae will not assess a compensatory fee for those IRS Forms 1099-A that do not include the borrower's taxpayer identification number. However, if the servicer failed to list one of these cases on a Summary of IRS Form 1099-A Filing (Form 1100), it must prepare one and execute the certification that it complied with the IRS' requirements for attempting to obtain the borrower's taxpayer identification number.

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Section 116

**Section 116
Notifying IRS About
Cancellations of
Indebtedness (09/30/05)**

The IRS requires certain mortgage holders, including Fannie Mae, to file information returns when \$600 or more of a borrower's mortgage debt is cancelled. Except as provided in *Section 116.05, Reporting via Magnetic Media (09/30/05)*, a servicer must file these returns on Fannie Mae's behalf, using IRS Form 1099-C, for whole mortgage loans (including participation pool mortgage loans if Fannie Mae's percentage ownership is 50 percent or greater) that Fannie Mae holds in its portfolio, and for MBS mortgage loans (including mortgage participations if the securitized portion of the whole mortgage loan is 50 percent or greater) that are not serviced under the regular servicing option. A servicer must satisfy the reporting requirements for the "owner of record" (instead of on Fannie Mae's behalf) for participation pool mortgage loans held in Fannie Mae's portfolio if Fannie Mae's ownership interest is less than 50 percent, for mortgage participations in MBS pools if the securitized portion of the whole mortgage loan is less than 50 percent, and for most MBS mortgage loans serviced under the regular servicing option. However, if the servicer did not perform its regular servicing obligation to purchase a delinquent MBS mortgage loan before any debt was cancelled, the servicer must file the information return on Fannie Mae's behalf. Fannie Mae is required to report cancellations of indebtedness occurring on or after January 1, 2005.

**Section 116.01
Determining When a
Debt Is Cancelled
(09/30/05)**

A debt is cancelled (in whole or part) when any of the following occur:

- discharge in bankruptcy under Title 11 of the U.S. Code;
- receivership, foreclosure, or similar federal or state court proceeding makes the debt unenforceable;
- the statute of limitations applicable to collecting the debt expires (if so determined by a court and any appeal period has expired), or expiration of the statutory period for filing a claim or beginning a deficiency judgment proceeding;
- foreclosure remedies by law end or bar the lender's right to collect the debt (e.g., foreclosure by exercise of the "power of sale" in the mortgage or deed of trust);
- probate or similar proceeding cancels or extinguishes the debt;

- the lender and the borrower agree to cancel the debt at less than full consideration;
- a decision or defined policy of the lender causes collection activity to be discontinued and the debt to be cancelled; or
- expiration of a “non-payment testing period.”

The IRS presumes that a debt is cancelled during a calendar year if no payment has been received on the mortgage loan during a period (the “non-payment testing period”) of 36 months, plus the number of calendar months when collection activity was precluded by a stay in bankruptcy or similar bar under state or local law. The presumption may be rebutted, however, if there has been significant, bona fide collection activity at any time during the calendar year, or if facts and circumstances, existing as of January 31 of the calendar year following expiration of the 36-month period, indicate that the indebtedness has not been discharged.

Section 116.02
Preparing IRS Form
1099-C (09/30/05)

The servicer is responsible for completing the Cancellation of Debt (IRS Form 1099-C) accurately, and for filing it with the IRS and providing the information to the borrower (and in some cases, Fannie Mae) by the required dates. If the IRS penalizes Fannie Mae because its servicer failed to file a return—or filed an incorrect or late return—Fannie Mae will require the servicer to reimburse Fannie Mae for any penalty fees the IRS assesses (unless the servicer can document that it met the filing requirements). The form must be filed on or before February 28 (or March 31 if filing electronically) of the year following the calendar year in which the discharge of indebtedness occurs.

The servicer also must furnish the borrower with an information statement before January 31 of that year. The requirement for notifying the borrower can be satisfied by sending Copy B of a completed IRS Form 1099-C (or a substitute statement that complies with IRS requirements for substitute forms) to the borrower’s last known address, and the servicer must send Copy C to those states that require it. When the form is filed on Fannie Mae’s behalf, it must show Fannie Mae’s name as the “Creditor,” Fannie Mae’s address and federal identification number (52-0883107), and include a legend identifying the statement as important tax information that is being furnished to the IRS. If it is filed by the servicer on its own behalf or for the “owner of record,” the name, address, and identification

number of the servicer or owner of record, respectively, are provided instead.

Information that must be reported on the IRS Form 1099-C includes:

- the borrower's name, address, and taxpayer identification number (usually the Social Security number if the borrower is a natural person);
- the date the debt was cancelled;
- the amount of the cancelled debt, which does not include interest or any amount received in satisfaction of the debt from a foreclosure sale or other means;
- a description of the debt, such as "mortgage loan," and a description of the property if a combined IRS Form 1099-C and 1099-A is filed;
- whether the borrower is personally liable for the debt;
- whether the debt was cancelled in bankruptcy; and
- the fair market value of the property if a combined IRS Form 1099-C and 1099-A is filed.

If the cancelled mortgage debt had an original principal amount of \$10,000 or more, was originated after 1994, and involves borrowers who are jointly and severally liable for the debt, a separate information return for each borrower must be filed, and each return must report the entire amount of the cancelled debt. If the mortgage debt was originated prior to January 1, 1995, or if the original principal amount of the cancelled mortgage debt was less than \$10,000, and if there are multiple borrowers, reporting is required only with respect to the primary (or first-named) borrower. In addition, only one information return is required, regardless of the origination date or the original principal amount, if the servicer knows, or has reason to know, that co-borrowers were husband and wife living at the same address when the mortgage loan was originated, and does not know or have reason to know that such circumstances have changed when the debt is cancelled.

Section 116.03
Exceptions to IRS Form
1099-C Reporting
(09/30/05)

Certain bankruptcies. Fannie Mae's servicer need not report a debt cancelled in bankruptcy unless the mortgage loan was originated as an investment property mortgage loan.

Interest. Interest need not be reported. If it is reported as part of the cancelled debt, the IRS Form 1099-C instructions require that it be shown in a separate box on the form.

Non-principal amounts. Cancellation of amounts other than stated principal, including penalties, fines, fees, and administrative costs charged to the borrower, need not be reported.

Release of a co-mortgagor. IRS Form 1099-C need not be filed when one borrower is released from a mortgage loan as long as the remaining borrowers are liable for the full UPB.

Guarantor or surety. A guarantor or surety is not a borrower for purposes of the debt cancellation reporting requirements, so IRS Form 1099-C is never required.

Section 116.04
Coordination with
Reporting Abandonments
or Acquisitions (09/30/05)

If, in the same calendar year, mortgage debt is cancelled in connection with the acquisition or abandonment of the same borrower's property securing the mortgage loan, filing a timely and accurate IRS Form 1099-C will satisfy the requirement to file an IRS Form 1099-A.

Section 116.05
Reporting via Magnetic
Media (09/30/05)

The procedures set forth in *Section 115.02, Reporting via Magnetic Media (09/30/05)*, apply to a servicer that is able to report IRS Form 1099-C information on magnetic media. A servicer that would report IRS Form 1099-C information manually must follow the procedures set forth in *Section 115.03, Reporting via Manually Prepared Reports (09/30/05)*.

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Exhibit 1

Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings (08/24/03)

The following information must be sent to a foreclosure attorney (or trustee) when a mortgage loan is referred for the initiation of foreclosure proceedings:

Servicer Information

- Servicer's Name and Address, and Fannie Mae Identification Number
- Servicer's Contact Person's Name, Telephone Number, and Fax Number

Property Information

- Property Address, and Tax Identification Number or Assessor's Parcel Number (if available)
- Property Type (Single-family, duplex, condo, co-op, etc.) For manufactured homes, the servicer must advise the selected attorney (or trustee) and forward to him or her a copy of the pre-referral property inspection report and copies of all appropriate lien documents including, if applicable, any documents that evidence surrender of the certificate of title to the home.
- Number of Dwelling Units
- Occupancy Status
- Principal Residence or Investment Property (If the mortgage loan is secured by an investment property, it is very important to provide all known information, including number of units, occupancy status, names of any tenants, rental income, lease amounts, etc.)
- Native American Land (Tribal Trust, Allotted, Restricted Fee, as applicable)

- Name and Telephone Number of Management Agent for a Cooperative Project (if applicable)
- Name and Telephone Number of Homeowners' Association for Condominium Project (if applicable)

Borrower Information

- Borrower's Name
- Borrower's Mailing Address (if different from Property Address)
- Borrower's Social Security Number or Taxpayer Identification Number
- Borrower's Current Military Status (if any)

Mortgage Loan Information

- Servicer's Loan Identification and Fannie Mae Loan Number
- MERS Mortgage Identification Number (MIN), if applicable
- Lien Priority (First or Subordinate)
- Original Mortgage Loan Amount
- Current UPB and Last Paid Installment Date
- Total Amount Past Due (Reinstatement)
- Total Amount Past Due (Payoff)
- Brief Servicing History for last 12 months (including previous foreclosure referrals, foreclosure prevention efforts, and bankruptcies)
- Name of Mortgage Insurer (if applicable)
- Any other Important Mortgage Loan Characteristics (such as Home Equity Conversion Mortgage status, Texas Home Equity Loan, etc.)

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Exhibit 1

When a servicer initiates foreclosure proceedings on a mortgage loan secured by a manufactured home, the servicer must provide the foreclosure attorney (or trustee) with:

- information that the property type is manufactured housing;
- copies (or originals, if originals will be needed) of all collateral documents or other documents that may facilitate the process; and
- a copy of its pre-referral property inspection report, or all the information that was gathered in connection with that property inspection that relates to the status of the property as manufactured housing.

**Foreclosures,
Conveyances and
Claims, and Acquired
Properties**

Foreclosures

Exhibit 1

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This page is reserved.

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Exhibit 2

Exhibit 2: Expected Servicer/Attorney (or Trustee) Interaction (08/24/03)

Fannie Mae requires the servicer and the foreclosure attorney (or trustee) to interact throughout the conduct of foreclosure proceedings. Some of the key instances of this interaction are listed below. This list is not intended to be all-inclusive—there will be other mortgage loan and jurisdictional specific servicing obligations; therefore, the servicer must respond to any attorney (or trustee) request consistent with the requirements and time frames detailed below.

- The servicer must submit a complete referral package to the selected attorney (or trustee). The referral package must include mortgage loan status data (from *Exhibit 1: Mortgage Loan Status Data for Foreclosure Proceedings*) and the documentation the attorney (or trustee) needs to conduct foreclosure proceedings.
- If the property type includes manufactured housing, the servicer must advise the selected attorney (or trustee) and forward to him or her a copy of the pre-referral property inspection report and copies of all appropriate lien documents including, if applicable, any documents that evidence surrender of the certificate of title to the home.
- The attorney (or trustee) will acknowledge receipt of the referral package (and indicate whether or not it is complete) within two business days. The servicer must provide any required missing documentation to the attorney (or trustee) within five business days after it receives the attorney's (or trustee's) request.
- The attorney (or trustee) will notify the servicer of the scheduled foreclosure sale date (or the scheduled Uniform Commercial Code [UCC] sale date, for cooperative units). If the court orders a Foreclosure by Sale in Connecticut, the attorney will so advise the servicer. The servicer must provide the attorney (or trustee) with bidding instructions at least five business days before the scheduled sale date. If a servicer's failure to provide bidding instructions results in the continuance or postponement of a scheduled foreclosure sale, Fannie Mae will require the servicer to reimburse Fannie Mae for losses resulting from the delay. If a deficiency judgment is to be pursued in Louisiana, the servicer must advise the attorney.

- The attorney (or trustee) will contact the servicer on the day of the foreclosure sale (or the UCC sale, for a cooperative unit) to confirm that the property was acquired at the sale.
- The servicer must provide any additional information, verifications, certifications, documentation, and signatures the attorney (or trustee) requests no later than three business days after the attorney (or trustee) asks for them. To ensure that this timeline is met, a servicer should consider giving the attorney (or trustee) a limited power of attorney, or other similar alternatives.
- The servicer must respond to the attorney's (or trustee's) request for an advance of funds to defray out-of-pocket costs within ten business days in any instance in which the attorney (or trustee) is required to make a significant advance in connection with the foreclosure.
- The servicer must notify the attorney (or trustee) within two business days after delinquency arrangements with the borrower have been agreed to or within two business days after the mortgage loan is fully reinstated.

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Exhibit 3

**Exhibit 3: Attorney's and Trustee's Fees
(05/01/10)**

State	Non-Judicial Foreclosure	Judicial Foreclosure
Alabama	\$600 ¹	On Approval ²
Alaska	\$1,200	On Approval ²
Arizona	\$625	On Approval ²
Arkansas	\$600	\$750
California	\$650 ³	On Approval ²
Colorado	\$875	On Approval ²
Connecticut	N/A	\$1250 ^{4, 5}
Delaware	N/A	\$950
District of Columbia	\$600 ^{1, 6}	On Approval ²
Florida	N/A	\$1,300 ^{1, 7}
Georgia	\$600 ¹	On Approval ²
Guam	\$1,200	On Approval ²
Hawaii	\$1,100	On Approval ²
Idaho	\$600	On Approval ²
Illinois	N/A	\$1,300
Indiana	N/A	\$1,100
Iowa	\$550	\$850
Kansas	N/A	\$850
Kentucky	N/A	\$1,350
Louisiana	N/A	\$1,050
Maine	N/A	\$1,250
Maryland	\$950 ^{1, 6}	On Approval ²
Massachusetts	N/A	\$1,300 ⁴
Michigan	\$700	On Approval ²

**Foreclosures,
Conveyances and
Claims, and Acquired
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Foreclosures

Exhibit 3**April 28, 2010**

State	Non-Judicial Foreclosure	Judicial Foreclosure
Minnesota	\$700 ⁸	On Approval ²
Mississippi	\$550 ¹	On Approval ²
Missouri	\$650	On Approval ²
Montana	\$600	On Approval ²
Nebraska	\$600	On Approval ²
Nevada	\$600	On Approval ²
New Hampshire	\$900	On Approval ²
New Jersey	N/A	\$1,300
New Mexico	\$600	\$1,100
New York	\$800 ⁹	\$1,400 ^{4,9}
North Carolina	\$800	On Approval ²
North Dakota	N/A	\$950
Ohio	N/A	\$1,350
Oklahoma	N/A	\$1,100
Oregon	\$675	On Approval ²
Pennsylvania	N/A	\$1,300 ¹⁰
Puerto Rico	N/A	\$1,100 ^{4,11}
Rhode Island	\$900	On Approval ²
South Carolina	N/A	\$1,050 ¹
South Dakota	N/A	\$950
Tennessee	\$600	On Approval ²
Texas	\$600	On Approval ²
Utah	\$600	On Approval ²
Vermont	N/A	\$1,050 ¹²
Virgin Islands	N/A	\$1,100
Virginia	\$600	On Approval ²
Washington	\$675	On Approval ²
West Virginia	\$550 ^{1,6}	On Approval ²

**Foreclosures,
Conveyances and
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Foreclosures

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Exhibit 3

State	Non-Judicial Foreclosure	Judicial Foreclosure
Wisconsin	N/A	\$1,200
Wyoming	\$600	On Approval ²

Notes:

¹This fee covers the combined attorney's and notary's fees.²Because this is not the preferred method of foreclosure, Fannie Mae's Regional Counsel must approve its use prior to initiation by sending a request to nonroutine_litigation@fanniemae.com. Fannie Mae will provide procedural instructions and applicable fees at the time it grants approval.³This fee applies to completed foreclosures. If the mortgage loan is reinstated after recordation of the Notice of Default (but before mailing of the Notice of Sale), the maximum fee is \$300 or the maximum allowed by statute, whichever is less. If the mortgage loan is reinstated after mailing of the Notice of Sale but before the Trustee's Sale, the maximum fee is \$500 or the maximum allowed by statute, whichever is less.⁴An additional \$200 will be permitted when the property is sold to a third party and the attorney must perform additional work to complete the transfer of title to the successful bidder.⁵This fee applies to Strict Foreclosures. If the court orders a Foreclosure by Sale, the fee will be \$1,500.⁶This fee covers both the attorney's fee and the trustee's commission (or statutory fee).⁷This fee includes reimbursement for any fee for the attorney's certificate of title.⁸This fee increases to \$1,100 for any case in which the attorney provides services for "proceedings subsequent" that involve registered land.⁹In New York, the non-judicial foreclosure process is to be used only in connection with cooperative share loans. The fee includes all steps in the foreclosure process, including the transfer of the stock and the lease for an occupied cooperative unit. A fee of \$2,000 will be permitted for judicial foreclosures in the City of New York and on Long Island (Nassau and Suffolk Counties).¹⁰This fee covers all legal actions necessary to complete the standard foreclosure in Pennsylvania, including motions to postpone or relist a sale and motions to reassess damages.¹¹In addition to the allowable foreclosure fee, Fannie Mae will pay a notary fee of \$150 for completed foreclosures. However, if a deed of judicial sale cannot be executed contemporaneously with the judicial sale, Fannie Mae will pay a \$300 notary fee.¹²This fee covers all cases in which strict foreclosure is allowed; generally, foreclosures in which the mortgagee can establish there is no equity in the property. For all other cases in which judicial foreclosure is required, a fee of \$1,200 will be permitted.

**Foreclosures,
Conveyances and
Claims, and Acquired
Properties**

Foreclosures

Exhibit 3

April 28, 2010

This page is reserved.

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Exhibit 4

**Exhibit 4: Daily Journal Corporation Newspapers for Trustee's
Sale Publications
(11/01/03)**

Daily Commerce (Los Angeles)

The Daily Recorder (Sacramento)

The Inter-City Express (Oakland)

Orange County Reporter

Riverside Business Journal

San Diego Commerce

San Jose Post-Record

Sonoma County Herald-Recorder

San Francisco Daily Journal

**Foreclosures,
Conveyances and
Claims, and Acquired
Properties**

Foreclosures

Exhibit 4

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This page is reserved.

April 28, 2010

Chapter 2. Conveyances and Claims (09/30/05)

The servicer is responsible for satisfying the requirements that FHA, HUD, VA, RD, or the mortgage insurer have established regarding the conveyance of an acquired property to them and for completing the actual conveyance within the required time frame. In addition, the servicer must establish procedures to ensure that all postforeclosure sale actions are taken in a timely manner, particularly in those states (such as Maryland) that require significant post-sale actions to obtain good and marketable title. Fannie Mae will hold the servicer responsible for a failure to obtain good and marketable title in a timely manner (even when the foreclosure sale was held within Fannie Mae's prescribed time frame).

The servicer also must file claims for mortgage loans insured by mortgage insurers not participating in the MI Direct® mortgage insurance claims process for conventional first mortgage loans and those mortgage loans that are not conventional first mortgage loans on which Fannie Mae bears the risk of loss. The servicer must file all claims in a timely manner following any special requirements that the insurer or guarantor may have. Fannie Mae requires the servicer of a whole mortgage loan or a participation pool mortgage loan that Fannie Mae holds in its portfolio, or of an MBS mortgage loan serviced under the special servicing option, to reimburse Fannie Mae if certain costs in the claim are disallowed; if the amount of interest payable is cut off solely because the servicer did not follow the required procedures for conveyance or claim filing; or if any payments the servicer owes the insurer or guarantor (for premiums, surcharges, etc.) are netted against the benefits paid to Fannie Mae. Fannie Mae also will require the servicer of an FHA Title I loan that was sold to Fannie Mae without recourse to make Fannie Mae whole if HUD does not honor the claim because sufficient credit was not transferred to Fannie Mae's claim reserve account when Fannie Mae purchased the mortgage loan or because of any other reason related to a failure to originate and service the mortgage loan in accordance with HUD's requirements.

The servicer of a regular servicing option MBS mortgage loan, an RD mortgage loan that is serviced under the modified special servicing option or the regular servicing option, or an FHA Title I loan that was sold to Fannie Mae “with recourse” must file the claim in its name since the claim proceeds should be paid directly to the servicer. If the servicer of a regular servicing option MBS mortgage loan purchases the mortgage loan before the claim settlement, then Fannie Mae will have no interest in the claim proceeds. But, if the servicer leaves the mortgage loan in the MBS pool until after it receives the claim settlement (or until 60 days after the foreclosure sale, whichever occurs first), then it must use its own funds (which may be claim proceeds in whole or part) to remove the mortgage loan from the pool. (See *Section 210, Settlements for MBS Regular Servicing Option Pool Mortgage Loans (06/01/07)*, for more detail.)

For all other mortgage loans, the servicer must identify Fannie Mae as the mortgage loan holder or claimant on conveyance and claim forms and other documents that are submitted with the claim. Then, to ensure that Fannie Mae gets direct payment of the settlement, the servicer must always indicate that a claim is being filed on Fannie Mae’s behalf. A servicer must always show Fannie Mae’s loan number and its Fannie Mae servicer identification number on the conveyance and claim forms. This will help Fannie Mae associate a claim settlement with the correct mortgage loan. If the claim settlement is still sent to the servicer, it must remit the full amount of the settlement to Fannie Mae immediately. Fannie Mae may require the servicer to pay Fannie Mae interest if these misdirected funds are not sent promptly.

**Section 201
Conveyance
Documents (01/31/03)**

The servicer must use the type of deed or other transfer instrument that is usually used to convey a property in the jurisdiction where the security property is located. The servicer must instruct the foreclosure attorney (or trustee) to include a street address and unit number where applicable, for the property (in addition to the legal description) in the conveyance document(s) to ensure that Fannie Mae will not experience any delays in identifying the correct location of the acquired property.

Title to the property may need to be conveyed to Fannie Mae in some instances and to the mortgage insurer or guarantor in other instances. The form of conveyance is dictated by the name under which the foreclosure proceedings were conducted (as discussed in the following *Sections*). The servicer must send Fannie Mae’s National Property Disposition Center a

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Section 201

copy of the foreclosure deed (or a deed-in-lieu of foreclosure) or any other applicable conveyance documents within two business days after title to the property is conveyed. The document(s), which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

If, during Fannie Mae's marketing of an acquired property, Fannie Mae finds that it needs additional information, it will contact the servicer by telephone or e-mail. Therefore, a servicer must retain in its individual mortgage loan file any and all material that could assist Fannie Mae in marketing, selling, or conveying the property.

Section 201.01
Foreclosure Conducted in
Fannie Mae's Name
(01/31/03)

When the foreclosure is conducted in Fannie Mae's name, no conveyance document is required unless the mortgage insurer or guarantor has indicated that it will accept conveyance of the property. When that is the case, a servicer that has Fannie Mae's limited power of attorney to execute conveyance documents must prepare, execute, and submit for recordation a warranty deed conveying title to the property to the insurer or guarantor. If the servicer does not have Fannie Mae's limited power of attorney (or, for some other reason, is unable to convey the title directly to the insurer or guarantor), the servicer must prepare the necessary documents to convey the property to the insurer or guarantor and submit them to Fannie Mae's National Property Disposition Center for execution at least two weeks before the title to the property will be turned over to the insurer or guarantor. Fannie Mae will return the document(s) to the servicer as soon as Fannie Mae executes them.

Section 201.02
Foreclosure Conducted in
Servicer's Name
(01/31/03)

When the foreclosure is conducted in the servicer's name, the servicer must convey title to the property to Fannie Mae after the servicer is the successful bidder at the foreclosure sale—if the mortgage loan is a conventional mortgage loan held in Fannie Mae's portfolio, a conventional mortgage loan in a special servicing option MBS pool, an RD mortgage loan serviced under the special servicing option, or an FHA or VA mortgage loan that cannot be conveyed to HUD. However, if the servicer

knows that a property can be conveyed to HUD or VA and that it is allowed to directly convey the title to HUD or VA, it must do so. In addition, title to the property must remain in the servicer's name for an FHA coinsured mortgage loan, an RD mortgage loan serviced under the modified special servicing option or the regular servicing option, or any MBS mortgage loan serviced under the regular servicing option since the servicer is responsible for marketing and disposing of the acquired property.

In those instances in which Fannie Mae requires the servicer to convey title to the property to Fannie Mae after the property is acquired, the foreclosure attorney (or trustee) must have title vested in Fannie Mae's name in a manner that will not result in the imposition of a transfer tax—such as assigning the foreclosure bid or judgment to Fannie Mae, including language in the judgment that directs the sheriff or clerk to issue a deed in Fannie Mae's name, or recording a grant deed to Fannie Mae immediately following the foreclosure sale, etc. (as discussed earlier in *Section 105, Conduct of Foreclosure Proceedings (05/10/10)*). The servicer must submit for recordation any deed conveying title to Fannie Mae on the day following the foreclosure sale. Should the mortgage insurer or guarantor decide to accept conveyance of the property after title has been conveyed to Fannie Mae, the servicer must follow the procedures for preparing conveyance documents for execution that are described above in *Section 201.01, Foreclosure Conducted in Fannie Mae's Name (01/31/03)*.

Section 202
Conveying the Property
(01/31/03)

Custody of the property must be turned over to HUD, VA, or the mortgage insurer as soon as possible after their requirements for conveying properties have been met. Sometimes, HUD or VA may not accept a property that the servicer conveyed. When this happens, the servicer must determine why the property was reconveyed to Fannie Mae. If HUD's or VA's reasons for not accepting the property are of the kind that can be easily resolved, the servicer must take any action that is required to correct the matter. The servicer must then reconvey the property to HUD or VA. If a second conveyance will not be accepted, the servicer must submit an *REOgram* notifying Fannie Mae of the acquisition of the property and must send Fannie Mae a separate written explanation of why HUD or VA would not accept the property. The servicer also must give Fannie Mae any recommendations it has for disposing of the property.

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**Section 202.01
FHA Mortgage Loans
(01/31/03)**

Because Fannie Mae has a special arrangement with HUD, the servicer can convey a property that secured an FHA mortgage loan as soon as Fannie Mae has acquired marketable title. Generally, Fannie Mae cannot acquire marketable title until any redemption period has ended and the property has been vacated. Sometimes, HUD may agree to accept an occupied property. The servicer must not convey a property that secured an FHA coinsured mortgage loan under any circumstances.

**Section 202.02
VA Mortgage Loans
(01/31/03)**

The servicer must convey a property that secured a VA mortgage loan to VA when it sends the “notice of election to convey” that VA requires. That notice must be sent to VA within 15 days after the foreclosure sale date. In some states, the 15 days start with the date of confirmation of the foreclosure sale or the date of judgment instead of the foreclosure sale date. At the same time, the servicer must send a preliminary billing for VA’s “upset price.”

**Section 202.03
Insured Conventional
Mortgage Loans
(01/31/03)**

A conventional mortgage insurer decides whether it will accept conveyance of a property that secured a conventional mortgage loan only after the claim has been filed. Therefore, the property cannot be conveyed until the mortgage insurer provides notice of its decision. When the claim is filed in Fannie Mae’s name and the claim settlement is sent directly to Fannie Mae, Fannie Mae will inform the servicer as soon as Fannie Mae receives the claim settlement. Whenever the mortgage insurer agrees to accept the property, the servicer must immediately convey it.

**Section 203
Filing Claims for FHA
Mortgage Loans
(01/31/03)**

Under HUD regulations, a mortgagee may submit a claim for FHA insurance benefits for a foreclosed single-family mortgage on the date the deed to HUD is filed for record. If specifically directed by HUD, a servicer may submit a claim without conveying title to the property to HUD. When that is the case, the servicer must comply with all aspects of HUD’s claim without conveyance procedures—providing the required notices to HUD, bidding the amount specified by HUD, etc. FHA Mortgagee Number 9500109998 must be used if the claim forms require Fannie Mae’s FHA Mortgagee Number. To make sure that a claim settlement is sent directly to Fannie Mae’s lockbox, the servicer must show Fannie Mae’s name and address on the claim form as follows:

Fannie Mae
P.O. Box 9776
Washington, DC 20016-9776

The servicer must send a copy of the applicable claim form to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

If a servicer erroneously indicates its name on a claim form for the mortgage loan, HUD will transfer the funds directly to the servicer, rather than to Fannie Mae. Should that happen, the servicer must remit the funds to Fannie Mae immediately. Fannie Mae may impose a daily compensatory fee for delayed remittances of FHA claim settlements that are the result of the servicer's erroneous preparation of the claim form. The compensatory fee will be calculated at the prime rate (published in *The Wall Street Journal's* prime rate index) that was in effect on the first business day of the month in which HUD transferred the funds to the servicer, plus 3 percent.

If a servicer cannot convey title to HUD, submit the required title evidence or fiscal data, or file a supplemental claim within the time frames that HUD allows, it must send a *Mortgagee's Request for Extensions of Time* ([Form HUD-50012](#)) to its local HUD office. This request should provide a valid reason for the extension and define the circumstances that prevent the servicer from taking the timely action. It must be mailed at least ten days before the allowable time period has elapsed.

A servicer must analyze the claim payment advice letter that it receives from HUD (particularly those in which interest is curtailed or expenses are disallowed) to determine whether it needs to file a supplemental claim or to contact HUD to offer an explanation that will reverse the curtailment or disallowance. (Any appeal must be submitted within three months of the date of HUD's denial letter.) When Fannie Mae completes its final claim analysis for an FHA mortgage loan, Fannie Mae will notify the servicer if it owes Fannie Mae any money or if, as the result of HUD's refusal to accept conveyance of the property or outright denial of the claim, the

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**Section 204
Filing Claims for FHA
Coinsured Mortgage
Loans (01/31/03)**

servicer has to purchase the property from Fannie Mae. Within 30 days after the date of Fannie Mae's notification, Fannie Mae requires the servicer to resolve the issue or to send Fannie Mae any money it owes.

After the foreclosure sale for an FHA coinsured mortgage loan, HUD expects the servicer to try to sell the property. However, Fannie Mae will assume the responsibility for marketing the property. If the property is not sold within six months after the foreclosure sale, the servicer must notify HUD. The notice must be sent to HUD before the six months have expired. HUD will arrange for an independent appraisal to determine the value of the property for claim purposes. Then, the servicer must file a claim within 15 days after it receives HUD's notice of the appraised value. At that same time, the servicer must send Fannie Mae a deed and any other documents necessary to convey title from Fannie Mae to the servicer. Fannie Mae will return the executed documents to the servicer for recordation.

If Fannie Mae is able to sell the property, Fannie Mae will notify the servicer as soon as the sales contract has been finalized. The servicer must file a *Single-Family Application for Insurance Benefits* (HUD [Form 27011](#)) with HUD within 15 days after the new mortgage loan is closed.

The servicer must send a copy of the claim form to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

As soon as the servicer receives the HUD claim settlement, it must remit the full amount it owes Fannie Mae. If the payment is not sent to Fannie Mae within 15 days after it is received, Fannie Mae may bill the servicer for a compensatory fee. Fannie Mae also will require the servicer to reimburse Fannie Mae for any amount that HUD disallows from the claim because of the servicer's failure to comply with HUD's requirements.

- When the property was sold (and Fannie Mae has the sales proceeds in its possession), the servicer's payment to Fannie Mae will represent the remaining UPB, debenture and mortgage loan interest included in HUD's settlement, and two-thirds of the foreclosure costs.
- When the property was not sold within the allowable six months (resulting in a claim settlement based on the appraised value of the property), the servicer's payment to Fannie Mae will represent the entire amount of the outstanding principal balance, debenture and mortgage loan interest included in HUD's settlement, and two-thirds of the foreclosure costs.

**Section 205
Filing Claims for FHA
Title I Loans (01/31/03)**

Title I is a coinsurance program, which means that FHA generally pays 90 percent of the loss on an individual claim and the lender pays 10 percent. However, for Title I loans registered in the portfolio loan insurance program, FHA is only obligated to pay claims up to 10 percent of the value of a lender's Title I portfolio. To monitor this, FHA establishes an unfunded claim reserve account for each mortgage loan originator (or purchaser). When a Title I home improvement loan is originated, FHA credits the lender's claim reserve account with an amount equal to 10 percent of the original amount of the loan. When an FHA Title I loan is sold to Fannie Mae without recourse, Fannie Mae's claim reserve account will be credited; otherwise, the originating lender's claim reserve account will be credited. A lender (or a mortgage loan purchaser) is paid for any claims it files up to the amount that it has in its claim reserve account. If, at any time, a lender (or mortgage loan purchaser) files a claim for an amount above the balance of its claim reserve account, the claim will be denied.

The servicer must file a claim under the insurance contract for an FHA Title I loan within nine months of the date of the borrower's default. Claims for Title I loans sold to Fannie Mae without recourse must be filed in Fannie Mae's name so that Fannie Mae's claim reserve account can be appropriately adjusted. Claims for Title I loans sold to Fannie Mae "with recourse" must be filed in the servicer's name. This will result in the servicer's claim reserve account being adjusted and the claim proceeds being sent to the servicer. (The claim proceeds will, in effect, reimburse the servicer for funds the servicer advanced to purchase the loan from Fannie Mae when it was assigned to HUD.)

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**Section 206
Filing Claims for VA
Mortgage Loans
(01/31/03)**

The servicer must provide to the local VA office a list of its officers who are authorized to execute VA claim forms for Fannie Mae. The servicer must keep its list current at all times.

The servicer must file the claim with VA within 15 days after the foreclosure sale. To make sure that a claim settlement is sent directly to Fannie Mae's lockbox, the servicer must show Fannie Mae's name and address on the claim form and on the billing for the "upset price." Use the following address for all VA claim forms:

Federal National Mortgage Association
P.O. Box 98968
Chicago, IL 60693

The servicer must send a copy of the *Claim Under Loan Guaranty* (VA Form 26-1874) to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

A servicer must analyze the claim settlement sheets that it receives from VA (particularly those in which interest is curtailed or expenses are disallowed) to determine whether it needs to contact VA to offer an explanation that will reverse the curtailment or disallowance. When Fannie Mae completes its final claim analysis for a VA mortgage loan, Fannie Mae will notify the servicer if it owes Fannie Mae any money or if, as the result of VA's refusal to accept conveyance of the property or outright denial of the claim, the servicer has to purchase the property from Fannie Mae. Within 30 days after the date of Fannie Mae's notification, Fannie Mae requires the servicer to resolve the issue or to send Fannie Mae any money it owes.

**Section 207
Filing Claims for Rural
Development Mortgage
Loans (01/31/03)**

Claim filing procedures for RD mortgage loans are similar for all three servicing options, except that the claim is filed for the benefit of the servicer in some cases and on Fannie Mae's behalf in other cases. Under the regular servicing option and the modified special servicing option, the servicer must purchase the mortgage loan from Fannie Mae immediately following the foreclosure sale and file the claim on its own behalf since it will be responsible for disposing of the acquired property. This also is true for any RD mortgage loan that is originated under the RD Native American Pilot program. Under the special servicing option, the servicer is not required to purchase the mortgage loan or to dispose of the acquired property; therefore, it files the claim on Fannie Mae's behalf. (To ensure that the claim settlement is sent directly to Fannie Mae's lockbox, the servicer must show Fannie Mae's name and address as follows: Fannie Mae, P.O. Box 98960, Chicago, IL 60693.)

When the servicer files a claim on Fannie Mae's behalf, it must send a copy of the claim form to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

RD's loss calculation for the claim will be based on the appraised value of the property at the time of the foreclosure sale (with an allowance for the costs of disposing of the property), not on the net sales proceeds actually received from the disposition of the property. RD usually will pay the servicer all (or a percentage) of the difference between the appraised value of the property and the outstanding principal balance, plus accrued interest, foreclosure costs, other approved advances, and an allowance for disposition costs. The guarantee with respect to any given loss covers all of the loss up to 35 percent of the original mortgage loan amount, while any additional loss up to 65 percent of the original mortgage loan amount is shared by RD (85 percent) and the servicer (15 percent). The responsibility for any loss not recovered from RD varies depending on the servicing option:

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- If the mortgage loan is serviced under the regular servicing option or was originated under the RD Native American Pilot program, the servicer is fully responsible for any losses not recovered from the RD.
- If the mortgage loan is serviced under the special servicing option, Fannie Mae will bear all losses not recovered from RD.
- If the mortgage loan is serviced under the modified special servicing option, Fannie Mae will reimburse the servicer for the portion of the allowable loss that RD does not pay. To obtain reimbursement of the difference between the calculated loss and RD's actual claim payment, the servicer should submit a *Cash Disbursement Request* ([Form 571](#)) to Fannie Mae. The servicer must send a copy of the RD claim form and notice of RD's acceptance or modification of the claim to Fannie Mae's National Property Disposition Center at the address shown above.

Fannie Mae will not reimburse the servicer of a modified special servicing option RD mortgage loan for any additional loss it incurs because it sells the property for a net sales price that is less than the appraised value of the property (less RD's allowance for the costs of disposing of the property). However, if the servicer's net sales price is more than the property's appraised value (less RD's allowance for the costs of disposing of the property), Fannie Mae will not require the servicer to return the funds Fannie Mae reimbursed.

**Section 208
Filing Claims for
Conventional Mortgage
Loans (06/30/04)**

Servicers must file all primary mortgage insurance claims for preforeclosure sales on all conventional first-lien mortgage loans on which Fannie Mae bears the risk of loss and are insured under a master primary policy issued by any approved mortgage insurer except Republic Mortgage Insurance Company. The mortgage insurance claim must be filed so that the claims proceeds are sent directly to Fannie Mae. Fannie Mae will file the primary mortgage insurance claims on mortgage loans insured by Republic Mortgage Insurance Company.

Claimable Event	Servicer Files Mortgage Insurance Claim in Fannie Mae's name	Action Code
Preforeclosure Sales and Third-Party Foreclosure Sales	Within 30 days after remitting the 310 receipt code to Fannie Mae for settlement of the third-party sale or approved preforeclosure sale	71
Property Acquired through Deeds-In-Lieu of Foreclosure and Foreclosure Sales	Within 30 days after the date of the foreclosure sale or, in states that have redemption periods after the foreclosure sale, within 30 days after the redemption period expiration	72

Once the mortgage insurance claim is filed, whether by the servicer or by Fannie Mae, the servicer has the following responsibilities.

For preforeclosure sale and third-party foreclosure sales:

- If the property is acquired through a third-party bidder at the foreclosure sale, or the property is sold by the borrower in an approved preforeclosure sale, the servicer must remove the mortgage loan from Fannie Mae's investor reporting system with an Action Code 71 and report the proceeds from the sale through the Cash Remittance System (CRS) using 310 receipt code.
- Provides the mortgage insurer with a copy of the final HUD-1 settlement statement, a copy of the valuation, and a copy of the approval letter stating the terms and conditions of any short payoff.
- Submit a final *Cash Disbursement Request* ([Form 571](#)) for reimbursement via the CRS no later than 30 days following the settlement of the third-party sale or approved preforeclosure sale.

Generally, the servicer is not required to take any further action unless it is contacted by Fannie Mae's eviction attorney and asked to provide certain information or documentation. If the servicer fails to provide requested documentation, it will be required to indemnify Fannie Mae for any losses caused by its inaction. The servicer must provide any additional information requested by the mortgage insurer in order to process the claim.

For properties acquired through deeds-in-lieu of foreclosure and foreclosure sales:

- If the property is acquired through foreclosure or deed-in-lieu of foreclosure, the servicer must submit an *REOgram* to notify Fannie Mae within 24 hours of the property acquisition. The servicer must also remove the mortgage loan from Fannie Mae's investor reporting system by submitting an Action Code 72.
- Submit a final [Form 571](#) for reimbursement via the CRS, no later than 30 days following the settlement of the deed-in-lieu of foreclosure or foreclosure sale date.
- For a deed-in-lieu of foreclosure, the servicer must provide the mortgage insurer with a copy of the evaluation.

Generally, the servicer is not required to take any further action unless it is contacted by Fannie Mae's eviction attorney and asked to provide certain information or documentation. If the servicer fails to provide requested documentation, it will be required to indemnify Fannie Mae for any losses caused by its inaction. The servicer must provide any additional information requested by the mortgage insurer in order to process the claim.

The servicer must send a copy of the claim form to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

After it files the claim, the servicer must follow up with the mortgage insurer to ensure that the claim is settled in a timely manner. The mortgage insurer generally is contractually required to pay the claim within a specified period—usually 60 days—after it receives all required documentation. If Fannie Mae does not receive the claim proceeds before

the end of the contractual period, Fannie Mae will ask the servicer to provide Fannie Mae with a reasonable explanation of the delay. In explaining the delay, the servicer must inform Fannie Mae of the date it met the mortgage insurer's documentation requirements (if they had not been met when the claim was filed), the dates of its follow-up efforts with the mortgage insurer, and the mortgage insurer's responses to the servicer's inquiries. If Fannie Mae believes that the servicer acted prudently, Fannie Mae will pursue the delayed claim payment directly with the mortgage insurer. However, if Fannie Mae determines there was no reasonable explanation for the delay, the servicer must advance its own funds to pay the claim amount due Fannie Mae.

If the servicer does not use the *Uniform Mortgage Insurance Claim for Loss* ([Form 1015](#)) to file the mortgage insurance claim, it must send the mortgage insurer's claim form under cover of a *Mortgage Insurer's Claim Payment Data* ([Form 567](#)). The mortgage insurer will use this form when it sends the claim settlement to Fannie Mae. To make sure that a foreclosure claim settlement is sent directly to Fannie Mae's lockbox, the servicer must show Fannie Mae's name and address as follows:

Federal National Mortgage Association
P.O. Box 98960
Chicago, IL 60693

When Fannie Mae receives the claim settlement, it will send the servicer a copy of the [Form 567](#) to let it know if it can convey the property to the mortgage insurer.

**Section 209
Filing Claims for HUD
Section 184 Mortgage
Loans (01/31/03)**

When the servicer of a Section 184 mortgage loan that was in a regular servicing option MBS pool elects HUD's alternative claim settlement option (assignment without the pursuit of foreclosure), HUD will immediately pay the servicer 90 percent of the mortgage loan guarantee amount (principal plus interest). However, when a servicer assigns any Section 184 mortgage loan to HUD for the commencement of foreclosure proceedings, HUD will pay the mortgage loan guarantee claim amount—100 percent of the UPB of the mortgage loan, accrued interest, and reasonable fees and expenses it prior-approved—on completion of the foreclosure proceedings.

If HUD does not complete foreclosure proceedings within one year from the date they were initiated, the mortgage holder has the option to select HUD's alternative claim settlement at that time. When Fannie Mae has not received the claim settlement within a reasonable time after the expiration of this one-year period, Fannie Mae will advise the servicer of a portfolio mortgage loan (or a special servicing option MBS mortgage loan that has been reclassified as a portfolio mortgage loan) if Fannie Mae wants the initial claim amended to request the immediate payment of 90 percent of the mortgage loan guarantee amount. The servicer of a Section 184 mortgage loan that is in a regular servicing option MBS pool may make its own determination of whether it is willing to wait until after HUD completes the foreclosure to receive the claim settlement or prefers to accept the lesser amount in return for an immediate settlement.

The servicer of a HUD Section 184 mortgage loan that Fannie Mae held in its portfolio or that was in a special servicing option pool must file the application for mortgage loan guarantee benefits on Fannie Mae's behalf to ensure that the claim settlement check is sent directly to Fannie Mae. The claim form must instruct HUD to send the proceeds to Fannie Mae; P.O. Box 9776; Washington, DC 20016-9776. After it files the claim, the servicer should submit a *Cash Disbursement Request* ([Form 571](#)) to request reimbursement for any HUD-authorized fees and expenses it advanced. In addition, the servicer must send a copy of the claim form to Fannie Mae's National Property Disposition Center within two business days after it files the claim. The claim form, which must be identified by the applicable Fannie Mae and servicer loan numbers and the servicer's name and Fannie Mae lender identification number, must be sent to the following address:

Fannie Mae
NPDC-Conveyance & Claims
P.O. Box 650043
Dallas, TX 75265-0043

Since the servicer of a HUD Section 184 mortgage loan that is in a regular servicing option MBS pool must make Fannie Mae whole when it assigns the mortgage to HUD, it must file the application for loan guarantee benefits in its own name. This is true whether it assigned the mortgage to HUD for the commencement of foreclosure proceedings or without the pursuit of foreclosure proceedings. (The claim settlement proceeds will, in

**Section 210
Settlements for MBS
Regular Servicing
Option Pool Mortgage
Loans (06/01/07)**

effect, reimburse the servicer for the funds it had to advance to purchase the mortgage loan from the MBS pool.)

If the servicer of a regular servicing option MBS mortgage loan chooses not to purchase the mortgage loan, then it must remove the mortgage loan from the MBS pool within 60 days after the foreclosure sale date (or, if the mortgage loan was uninsured, once it disposes of the property). However, the servicer must immediately purchase the mortgage loan from the MBS pool using its own funds, if the mortgage loan is at least 24 months past due, as measured by the last paid installment, before the servicer receives the claim settlement (or disposes of the property, if the mortgage loan was uninsured), unless one of the exceptions specified with respect to the 24-month purchase requirement has occurred or is occurring. (See *Part I, Section 208.05*, for the exception list.)

When the servicer receives the claim (or sales) proceeds, it must immediately deposit them in its scheduled/scheduled MBS P&I custodial account, report their receipt in the accounting reports for the current month, and remit them to Fannie Mae on the remittance date in the month following their receipt. Regardless of whether a claim settlement is a full or a partial settlement, the servicer must purchase the mortgage loan from the MBS pool at that time. If the servicer receives only a partial settlement because the claim is paid in installments (as is the case for FHA claims), the servicer must advance its corporate funds to purchase the mortgage loan from the MBS pool (retaining for its own account the partial settlement as well as all future installments of the claim settlement).

Chapter 3. Acquired Properties (01/31/03)

The servicer is required to purchase delinquent regular servicing option MBS mortgage loans and delinquent RD mortgage loans serviced under the modified special servicing option or the regular servicing option (regardless of whether they are held in Fannie Mae's portfolio or an MBS pool); therefore, the servicer assumes all responsibilities related to the acquisition and disposition of those security properties. When a property that secures any other type of mortgage loan is acquired by foreclosure or the acceptance of a deed-in-lieu and it cannot be conveyed to the insurer or guarantor, Fannie Mae will be responsible for all functions related to the disposition of the property once the servicer notifies Fannie Mae of the property acquisition.

Fannie Mae also may require the servicer to purchase an acquired property that is not marketable because the servicer failed to detect and correct a title deficiency—particularly when Fannie Mae has lost a sale, Fannie Mae is experiencing significant delays in marketing the property, or Fannie Mae has identified that the servicer's performance shows a pattern of deficiencies.

Section 301 Underwriting/Servicing Review Files (01/31/03)

When Fannie Mae's quality assurance risk assessment identifies a mortgage loan as having a higher degree of risk, Fannie Mae will perform a postforeclosure underwriting review to evaluate the lender's initial underwriting of the mortgage loan and, if applicable, the actions the servicer took in servicing the mortgage loan. In such cases, Fannie Mae will notify the servicer about the type of review Fannie Mae will perform and the scope of the review. Servicers must send the requested documentation within the time frame specified in Fannie Mae's selection notification. If a servicer is unable to deliver the files within the specified timeline, it must contact the National Underwriting Center to discuss the delay and a proposed alternative time frame.

Fannie Mae will make every effort to work with servicers when extenuating circumstances prevent them from delivering documentation in a timely manner. However, if a servicer delays in providing the underwriting information, Fannie Mae may require indemnification or purchase (depending on the circumstances of the individual case) of these mortgage loans. When a servicer has a pattern of extensive delays or

unresponsiveness, Fannie Mae may consider this a breach of contract and consider other actions against the servicer, up to and including termination.

Lenders are notified which mortgage loans Fannie Mae has selected for review via written or electronic notification. Electronic notification will be delivered via the Quality Assurance System if the servicer has signed up for it.

The servicer must package the requested documentation as an underwriting review file or a servicing review file (as applicable). When Fannie Mae asks the servicer for both an underwriting review and a servicing review file, the servicer may package the material as a single file (with the underwriting and servicing documentation separated and clearly labeled within the file) or as two separate files that are packaged together (with one file identified as the “underwriting” file and the other identified as the “servicing” file).

Section 301.01
Underwriting Review File
(11/08/04)

Generally, when Fannie Mae requests an underwriting review file, Fannie Mae requires the servicer to submit the entire underwriting file. Servicers must maintain a complete mortgage loan file, including all documents used to support the underwriting decision. Upon Fannie Mae’s request, servicers must provide copies of the complete mortgage loan file, as described in the request.

Files must include clear copies of any required paper documents, not the originals. Paper documents must be sent in a manila folder, with the credit and property documents on the right side and the legal documents on the left side.

If the servicer keeps its files electronically, Fannie Mae must be able to reproduce these documents in an acceptable manner in terms of cost and timeframes to Fannie Mae.

Servicers that wish to submit files in a form other than paper must contact the National Underwriting Center to ensure that the requested form is compatible with the National Underwriting Center’s systems and processes.

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The requested files must be sent to Fannie Mae's National Underwriting Center.

Fannie Mae encourages the servicer to submit the underwriting review file to Fannie Mae as soon as possible, particularly when its review of the file reveals a significant underwriting issue that needs to be addressed. When the servicer's review identifies significant deficiencies, it may offer to purchase the property from Fannie Mae when it submits the underwriting review file (rather than waiting for the results of Fannie Mae's review). Fannie Mae will entertain such offers—as long as they will make Fannie Mae whole—since Fannie Mae would no longer have to be concerned about the property disposition process.

When Fannie Mae has received the underwriting and/or servicing review file, it will begin the process of reviewing the file(s) to determine whether the mortgage loan met Fannie Mae's underwriting and/or servicing standards. If Fannie Mae concludes that a mortgage loan was ineligible and should never have been sold to Fannie Mae, Fannie Mae generally will issue a request for purchase (calling for the servicer to take title to the property and pay Fannie Mae for its full investment in it), although Fannie Mae may, on occasion, give the servicer the option of having Fannie Mae dispose of the property (and agreeing to indemnify Fannie Mae for any loss Fannie Mae incurs in connection with the sale), or require the lender to fully reimburse Fannie Mae for its loss in the event that Fannie Mae sells the property or accepts a purchase offer prior to notifying the servicer that the mortgage loan did not meet Fannie Mae's eligibility or underwriting requirements.

Section 301.02
Servicing Review File
(01/31/03)

Fannie Mae's evaluation of the actions the servicer took in servicing the mortgage loan will focus primarily on determining whether the servicer took all of the appropriate steps to cure the delinquency or avoid foreclosure (through Fannie Mae's various relief provisions or foreclosure prevention alternatives)—and, if a foreclosure could not be avoided, on confirming that the servicer completed the legal actions within Fannie Mae's required time frames. For the most part, Fannie Mae will rely on various reports that are produced by its automated delinquency and foreclosure prevention management systems to evaluate the servicer's performance. However, when Fannie Mae's analysis of these reports indicates that there is a possibility that the servicer's delinquency management performance is poor, Fannie Mae may require the servicer to

include a servicing review file for a mortgage loan when it submits the related underwriting review file to Fannie Mae's National Property Disposition Center. *Exhibit 1: Servicing Review File* provides a list of all of the documents that must be included in any servicing review file Fannie Mae request.

If Fannie Mae identifies any deficiencies in its evaluation of the servicing review file, it will communicate them to the servicer. The servicer will be given an opportunity to explain any mitigating circumstances or factors that justify the servicing actions it took (or did not take).

**Section 302
Property Management
(01/31/03)**

Servicers are required to submit an *REOgram* within one business day following the foreclosure or receipt of a deed-in-lieu of foreclosure. Late *REOgrams* may be subject to a penalty for each day after this date. Once Fannie Mae receives the *REOgram* notifying Fannie Mae about a property acquisition, Fannie Mae will designate a broker, agent, or property management company to assume certain property management responsibilities. However, Fannie Mae will approve all repair and marketing costs involved in the disposition of the property.

Servicers will continue to be responsible for advancing funds to pay for taxes, insurance premiums, and any homeowners' association (HOA) dues. Following the foreclosure, the servicer will normally cancel the hazard insurance policy within 14 days. Under certain circumstances, Fannie Mae also may request the servicer to perform some property management functions that usually would be assigned to a broker, agent, or property management company. For example, Fannie Mae might designate the servicer to handle these functions for a property that has suffered a fire loss since it cannot be marketed until the insurance company settles the claim.

**Section 302.01
Servicer's
Responsibilities
(01/31/03)**

The servicer is responsible for performing the following property management responsibilities until Fannie Mae notifies it that the property has been sold and that the final settlement has occurred:

- Requesting that the tax rolls be changed to reflect Fannie Mae's ownership of the property (specifying that the tax bills should continue to be directed to the servicer), and paying the appropriate taxes and assessments as they come due.

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- Contacting the management company if the acquired property was part of a condominium, PUD, or cooperative project to ensure that all future bills for homeowners' association (or cooperative corporation) assessments or fees are sent to the servicer, and paying the bills as they come due.

Section 302.02
Broker's, Agent's, or
Property Management
Company's
Responsibilities
(01/31/03)

Fannie Mae's National Property Disposition Center is responsible for assigning the real estate broker, agent, or property management company to oversee the property management and marketing responsibilities. The assigned broker, agent, or management company will manage the maintenance and repair of foreclosed properties and will contact the utility companies to have all bills for utility services directed to the broker for payment. Any issues the servicer may become aware of related to the management or marketing of a property after the foreclosure date must be reported to the National Property Disposition Center.

Section 303
Consideration of
Purchase Offers
(12/24/09)

Once Fannie Mae receives the *REOgram*, it will begin its marketing efforts for the property. If the underwriting (and, if applicable, servicing) review file was submitted in a timely manner, Fannie Mae may be able to resolve any underwriting or servicing issues before it receive any offers to purchase the property. However, there may be instances in which Fannie Mae receives an acceptable offer to purchase the property before Fannie Mae has had an opportunity to either review the underwriting (and, if applicable, servicing) file or resolve any identified issues. When Fannie Mae receives an offer to purchase a property that is also subject to an underwriting or servicing review, Fannie Mae may accept the purchase offer without first notifying the servicer, whether or not a final decision has been reached with respect to the review. If, after completion of the review, Fannie Mae determines that the mortgage loan did not meet its eligibility or underwriting requirements and Fannie Mae has incurred a loss by selling the property, the lender will be required to fully reimburse Fannie Mae for its loss.

Section 304
Reimbursement for
Expenses (01/31/03)

A servicer should request reimbursement for advances it made for property taxes, insurance premiums, and applicable homeowners' dues by submitting a *Cash Disbursement Request* ([Form 571](#)). Generally, Fannie Mae will reimburse the servicer for its advances every six months. However, Fannie Mae will consider more frequent reimbursements when the expenses on an individual case exceed \$500. The servicer must submit

**Foreclosures,
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Acquired Properties

Section 305

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its final [Form 571](#) for expenses incurred during the disposition process within 30 days after the property is disposed.

**Section 305
Filing IRS Form 1099-
MISC (01/31/03)**

When a servicer pays Fannie Mae's designated agent for expenses Fannie Mae authorized for maintenance, repair, or marketing of an acquired property or when it pays a contractor (either an individual or an unincorporated business) directly for recurring maintenance costs, minor repair costs, or routine costs for securing an acquired property, it must report such payments to the Internal Revenue Service. To accomplish this, the servicer must prepare an IRS Form 1099-MISC (*Miscellaneous Income*) for the appropriate tax year and submit it to the IRS and to the individual payee. This form must be filed in the servicer's name, using its IRS taxpayer identification number.

**Section 306
Excess Proceeds from
a Foreclosure Sale for
Resale Restricted
Properties (05/01/06)**

Excess proceeds obtained during a foreclosure sale must be distributed in accordance with applicable law. Resale restrictions may require the borrower to affirmatively assign proceeds due him or her to the subsidy provider.

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Exhibit 1

Exhibit 1: Servicing Review File (01/31/03)

Copies of all of the following documentation must be included in the servicing review file. The outside of the servicing review file must clearly identify the case, as follows: Servicing File for Acquired Property; Mortgage Remittance Type (A/A, S/A, or S/S); Servicing Option (Special or Shared Risk); Fannie Mae Loan Number; Servicer Loan Number; Borrower's Name; and Property Address.

- Collection history for the default that led to the foreclosure or deed-in-lieu of foreclosure (including the reason for the default, delinquency notices sent, and copies of borrower's previous payment histories);
- Summary of all attempts to develop a workout plan or arrange a foreclosure prevention alternative, including evidence of any communication with Fannie Mae;
- Bankruptcy tracking log, or a separate report indicating the dates of any bankruptcy filings and the dates that any lifting of a bankruptcy stay was attempted and attained; and
- Foreclosure tracking log, or a separate report indicating the date that the case was referred to the foreclosure attorney and the date of the foreclosure sale, as well as summarizing any communications with Fannie Mae about delays in the foreclosure process (including delays resulting from the presence of hazardous waste, natural disasters, massive layoffs, etc.) or departures from standard foreclosure procedures (such as using judicial foreclosure in a power of sale state).

**Foreclosures,
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Acquired Properties

Exhibit 1

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