

Announcement 08-32

December 10, 2008

Document Certification and Custody Eligibility Changes

Amends these Guides: Selling and Servicing

Introduction

Selling and Servicing Guides, Part I, Section 403: Custody of Mortgage Documents; and Section 403.02: Other Document Custodians

From time to time Fannie Mae reviews the document certification and custody requirements to evaluate their effectiveness and to ensure that the requirements adequately reflect the operational risks associated with document custody and certification. This Announcement introduces several changes that apply to document custodians.

A document custodian designated by a seller or servicer may be a third-party custodian, or it may be the seller or servicer itself or an affiliate of the seller or servicer (“seller, servicer, or affiliated document custodian”). The changes described in this Announcement apply to third-party custodians and to seller, servicer, or affiliated document custodians that hold or certify custody documents for MBS pool mortgages. They also apply for portfolio mortgages, if the mortgage seller has a negotiated contract that allows the documents for whole loan deliveries to be certified or held in custody by either a third-party custodian or by the seller, servicer, or affiliated document custodian.

Changes and clarifications related to document custodian eligibility requirements include:

- Financial rating requirements
- Clarification of Fannie Mae’s trust power requirements
- Approval process for new document custodians
- Active and inactive document custodian status
- Segregation of Fannie Mae custodial documents

Changes and clarifications related to document custodian operational requirements include:

- Trust receipts
- Servicing transfers

Effective Date

Unless otherwise stated, the changes described in this Announcement are effective February 1, 2009. The seller, servicer, and document custodian must have appropriate policies, procedures, and controls in place to determine that they meet these new requirements.

Financial Rating Requirements

Fannie Mae is revising the financial rating requirements for document custodians. In addition, Fannie Mae will now incorporate a Lacey Financial Corporation (LACE) rating into the financial rating criteria.

The new financial rating requirements create a two-tiered rating structure under which a seller, servicer, or affiliated document custodian will need to satisfy higher rating criteria than a third-party document custodian in order to be an eligible document custodian.

- Third-party document custodians must have one of the following ratings:
 - C/D or better Individual Rating from Fitch, Inc. (Fitch),
 - 125 or better rating from IDC Financial Publishing, Inc. (IDC), or
 - C or better rating from LACE.
- A seller or servicer that acts as a document custodian, or a document custodian that is affiliated with the seller or servicer must have one of the following ratings:
 - C or better Individual Rating from Fitch,
 - 130 or better rating from IDC, or
 - C+ or better rating from LACE.

If the document custodian is not a regulated financial institution, the document custodian's parent or subsidiary must meet the new financial rating standards. A document custodian does not need to meet all three ratings to qualify. However, if the document custodian (or its parent or subsidiary) is rated by Fitch and is also rated by IDC and/or LACE, it is the Fitch rating that will determine whether the institution satisfies Fannie Mae's rating criteria (provided that the IDC rating is not below 75 and/or the LACE rating is not below D). If the regulated entity is rated by IDC and LACE, the document custodian (or its parent or subsidiary) only needs to satisfy one of the two rating requirements (provided that the other rating is not lower than a 75 from IDC or a D from LACE).

The seller or servicer and the document custodian must have procedures in place to monitor the document custodian's financial rating on a quarterly basis to ensure ongoing eligibility to act as a document custodian. If the custodian is not a regulated institution and is relying upon its parent's or subsidiary's rating, the seller or servicer and the document custodian must have procedures in place to monitor that parent's or subsidiary's rating. Should the financial rating fall below the minimum criteria, both the document custodian and seller or servicer must immediately notify their Fannie Mae Servicing Consultant and send an email notification to thirdparty_custody@fanniemae.com. Fannie Mae will determine, in its sole discretion, whether it will allow the documents to remain with the current document custodian or require them to be transferred to an acceptable document custodian.

In assessing the eligibility of a seller or servicer that acts as a document custodian or a document custodian that is affiliated with the seller or servicer to certify and hold loans on behalf of Fannie Mae, Fannie Mae will also consider the financial rating of the seller or servicer. A seller or servicer that serves as Fannie Mae's document custodian or designates an affiliated entity as Fannie Mae's document custodian should have a financial rating that meets or exceeds at least one of the following criteria:

- Fitch Long Term rating of BBB,
- Standard & Poor's Long Term rating of BBB, or
- Moody's Investors Service, Inc. Long Term rating of Baa.

If the seller or servicer is not a rated institution, then the nearest parent that has a rating should have a financial rating that meets or exceeds at least one of the criteria immediately above.

If the seller or servicer fails to meet the recommended financial rating, Fannie Mae, in its sole discretion, may restrict the seller's or servicer's ability to serve as Fannie Mae's document custodian or to use an affiliated document custodian or may impose additional duties and restrictions on the seller or servicer and/or on the affiliated document custodian.

Clarification of Fannie Mae's Trust Power Requirements

Fannie Mae requires that if a seller or servicer wants to act as the document custodian for MBS mortgages it delivers to Fannie Mae, it must have an independent custody department (which is established and operated under the trust powers granted by its primary regulator). Fannie Mae is now clarifying that this requirement also extends to an affiliate of a seller or servicer that is acting as Fannie Mae's document custodian. In addition, the affiliate document custodian must also meet all other eligibility requirements for a seller or servicer acting as Fannie Mae's document custodian as outlined in the *Selling Guide*, Part I, Section 403.02: Other Document Custodians.

Approval Process for New Document Custodians

Effective immediately, on a prospective basis, Fannie Mae will require all new document custodians to be approved by Fannie Mae. To receive approval, the document custodian must submit a completed *Application for Active Document Custodianship* (Form 2008) to Fannie Mae with the following supporting documentation:

- original *Master Custodial Agreement* (Form 2003) executed by document custodian and servicer, if applicable;
- evidence of document custodian's fidelity bond and errors and omissions insurance coverage;
- copy of the document custodian's fire rating for the vault;
- copy of organizational chart for the document custodian's certification and custody functions;
- description of document custodian's document tracking system; and
- if an applicant is a seller, servicer, or affiliated document custodian, evidence that the document custodian is operating under trust powers granted by its primary regulator.

The new Form 2008 is available on eFannieMae.com.

Form 2008 requires that, among other things, document custodians provide the following information:

- name;
- address;
- phone number;
- Regulatory ID or Financial Institution Number;
- general business and daily operational information;
- notification of any substantial changes in ownership, management, facilities or procedures over the past year; and
- if applicable, a list of all Fannie Mae sellers or servicers for which the document custodian intends to perform document custodian services.

Form 2008 also requires document custodians to confirm eligibility and operational compliance in the following areas:

- financial institution regulation and rating,
- vault and note storage,
- errors and omissions coverage/financial institution bond,
- written policies and procedures, and
- staff knowledge and training.

The completed Form 2008 and all required supporting documentation must be sent to:

Fannie Mae
Custodian Oversight and Monitoring
Approval for Active Document Custodian
13150 Worldgate Drive
Herndon, VA 20170

Fannie Mae will typically notify the document custodian of approval or denial via written communication within 20 business days of submitting a completed application. In some cases, an onsite visit may be necessary, which may increase the timeframe for a final decision. If approved, the document custodian's name will be added to the list of Fannie Mae Active Document Custodians on eFannieMae.com.

Active and Inactive Document Custodian Status

Fannie Mae will designate each document custodian as either an Active Document Custodian or an Inactive Document Custodian. An Active Document Custodian is defined as an entity that has certified MBS or portfolio mortgage loans for Fannie Mae in the previous calendar year. For purposes of this Announcement and for the initial designation of Active Document Custodian status, Fannie Mae is utilizing the timeframe from January 1, 2007 thru September 1, 2008 as a baseline. An Inactive Document Custodian is defined as an entity that has not certified MBS or portfolio mortgage loans for Fannie Mae in the previous calendar year but is holding mortgage loans in custody for Fannie Mae. Fannie Mae will determine a document custodian's subsequent designation (active or inactive) on an annual basis ending December 31st of each calendar year. Both Active and Inactive Document Custodians are obligated to meet Fannie Mae's eligibility and operational requirements as set forth in the *Selling* and *Servicing Guides* and [Requirements for Document Custodians](#) in order to hold mortgage loans in custody for Fannie Mae.

Any document custodian identified by Fannie Mae as an Active Document Custodian, based on the criteria set forth above, will not have to apply for approval provided the document custodian maintains its Active Document Custodian status by certifying at least one MBS or portfolio loan on behalf of Fannie Mae in each subsequent calendar year.

Fannie Mae requires official notice of any sale, merger, reorganization or other major change in the document custodian's organization or ownership. The document custodian must provide email notification of any such change to thirdparty_custody@fanniemae.com. Fannie Mae will then determine if the document custodian needs to seek re-approval or take any other actions to satisfy Fannie Mae's requirements to act as a document custodian.

If an Inactive Document Custodian desires to certify new MBS mortgage loans for Fannie Mae, the custodian must comply with the application and approval process. The Inactive Document Custodian must be approved as an Active Document Custodian

before it may certify new MBS loans for Fannie Mae. Any document custodian that is approved by Fannie Mae as an Active Document Custodian will maintain its Active Document Custodian status provided it certifies at least one MBS or portfolio loan on behalf of Fannie Mae in each subsequent calendar year.

If a document custodian that does not currently hold Fannie Mae mortgage loans desires to certify and/or hold MBS mortgage loans for Fannie Mae, the document custodian must comply with the application and approval process described above. The new document custodian must be approved before it certifies and/or holds Fannie Mae MBS mortgage loans. If approved, the document custodian will be an Active Document Custodian. The document custodian will maintain its active status provided it certifies at least one MBS or portfolio loan on behalf of Fannie Mae in each calendar year.

The approval process is not intended to replace or diminish any duties or obligations the seller, servicer or document custodian has to Fannie Mae under the *Selling* and *Servicing Guides* and *Requirements for Document Custodians*. Rather, the approval process is designed to allow Fannie Mae to track and reasonably determine a document custodian's readiness before it performs certification on behalf of Fannie Mae.

Segregation of Fannie Mae Custodial Documents

Fannie Mae currently allows a document custodian to commingle Fannie Mae mortgage files with other investors' mortgage files as long as the loans are identified as Fannie Mae loans on the document custodian's tracking system, the pool files can be assembled quickly upon Fannie Mae's request, and Fannie Mae has reasonable access to the document custodian's system in the event the document custodian is unable to assemble the files. Fannie Mae is revising this policy only as it relates to sellers, servicers, or affiliated document custodians. Third-party custodians may continue to commingle Fannie Mae loans.

Effective immediately, on a prospective basis, all sellers, servicers, or affiliated document custodians will be required to segregate Fannie Mae mortgage files from those of other investors. All Fannie Mae mortgage files should be clearly identified as Fannie Mae assets.

Fannie Mae realizes that this change in policy may result in operational issues for sellers, servicers, or affiliated document custodians. Therefore, any seller, servicer, or affiliated document custodian that satisfies all of Fannie Mae's eligibility requirements for document custodians and that currently commingles its Fannie Mae loans with other investors' loans will be granted a waiver of the requirement to segregate the Fannie Mae loan files. This waiver will be documented in an amendment to each *Master Custodial Agreement* (Form 2003) to which the seller, servicer, or affiliated document custodian is a party. Both the servicer and the document custodian must sign this amendment. To request a waiver, send an email message to waiver_management@fanniemae.com. Fannie Mae reserves the right to revoke such waiver and require the loans to be

segregated at any time, at its discretion, if Fannie Mae believes that such action is prudent and necessary to protect its interests.

Sellers, servicers, or affiliated document custodians that do not currently commingle Fannie Mae loans with other investors' loans may not change their current filing methods to commingle Fannie Mae loans.

Document Custodian Operational Requirements

Trust Receipts

When Fannie Mae purchases or securitizes a mortgage, the mortgage seller represents and warrants that title to the mortgage note is free and clear of any security interest, lien, pledge, or other encumbrance, which means that any such interest held by a third party must be released no later than the date Fannie Mae acquires the note. To assure that this is always the case, Fannie Mae is clarifying its bailee requirements for circumstances in which the document custodian is either:

- aware of the seller's issuance of a trust receipt (or other type of pledge documentation); or
- directly or indirectly involved in the issuance of a trust receipt (or other type of pledge documentation) to a funding facility, credit facility, or lending line in which the seller has pledged the mortgage note prior to its sale to Fannie Mae.

In such cases, the document custodian must work with the seller to ensure that the security interest has been released either prior to settlement in the case of an MBS loan or prior to certification in the case of a whole loan delivery. If a mortgage seller wants to take advantage of one of Fannie Mae's early funding options, it must make sure that the document custodian is aware of the applicable funding date.

The document custodian must have policies and procedures in place to capture the release date and must provide such documentation upon request. In addition, the processes must be testable by Fannie Mae.

This clarification to Fannie Mae's bailee requirements does not affect or alter any other duty the custodian has to Fannie Mae under its current bailee requirements.

Servicing Transfers

Servicing Guide, Part I, Section 205.05: Notifying Third Parties

In the case of a servicing transfer, the *Servicing Guide* currently requires that either the transferor servicer or the transferee servicer notify the document custodian that maintains possession of custody documents for any mortgages included in the transfer to advise them of the transfer. Fannie Mae is amending this notification requirement to require

notification to the document custodian of the servicing transfer by both the transferor servicer and the transferee servicer.

There are several custodial requirements tied to a servicing transfer. The document custodian is required to recertify the documents regardless of whether the documents themselves are moved. If the documents are not moved, the document custodian must change the servicer associated with the loan files in its tracking system. The document custodian is required to track the mortgage loan documents it holds on behalf of Fannie Mae by servicer. In addition, the transferee servicer must have a valid *Master Custodial Agreement* (Form 2003, dated November 2006) in place with the document custodian.

Sellers, servicers, and document custodians should contact thirdparty_custody@fanniemae.com if they have questions about Announcement 08-32.

Michael A Quinn
Senior Vice President
Single Family Risk Officer