



## Lender Letter LL-2016-06

**December 14, 2016\***

### **To: All Fannie Mae Single-Family Servicers Fannie Mae Flex Modification**

*\*reposted December 15, 2016*

Fannie Mae is introducing a new mortgage loan modification jointly developed with Freddie Mac at the direction of the Federal Housing Finance Agency. The Fannie Mae Flex Modification combines features of the Fannie Mae HAMP, Standard Modification, and Streamlined Modification, and is intended to replace Standard and Streamlined Modifications as of the effective date provided below. The Fannie Mae Flex Modification can be applied to all mortgage loan delinquencies, and to mortgage loans that are determined to be in imminent default in accordance with the *Servicing Guide*.

Borrowers with mortgage loans less than 90 days delinquent must submit a complete Borrower Response Package (BRP) in accordance with this Lender Letter, and will be evaluated for a Fannie Mae Flex Modification which will target a 20% payment reduction and a 40% Housing Expense-to-Income (HTI) Ratio. Borrowers with mortgage loans 90 or more days delinquent are not required to submit a BRP and will be evaluated for a Fannie Mae Flex Modification which will target a 20% payment reduction.

#### **Effective Date**

The servicer is encouraged to implement the policies in this Lender Letter as early as March 1, 2017; however, the servicer must begin evaluating borrowers for the Fannie Mae Flex Modification no later than October 1, 2017. Once implemented, the servicer must offer the Fannie Mae Flex Modification to all eligible borrowers according to the requirements in this Lender Letter and not evaluate borrowers for a Fannie Mae Standard or Streamlined Modification.

#### **Date of Servicing Guide Update**

The policy changes in this Lender Letter will be reflected in the October 2017 update of the *Servicing Guide*.

This Lender Letter covers the following requirements for the Fannie Mae Flex Modification:

- Documentation Requirements
- Determining Eligibility for a Fannie Mae Flex Modification
- *Determining Eligibility for a Fannie Mae Flex Modification for a Texas Section 50(a)(6) Mortgage Loan*
- *Obtaining a Property Valuation*
- *Performing an Escrow Analysis*
- Determining the Fannie Mae Flex Modification Terms
- *Calculating the Housing Expense-to-Income Ratio*
- Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification
- Soliciting the Borrower for a Fannie Mae Flex Modification
- Handling a Complete Borrower Response Package
- *Preparing the Loan Modification Agreement*
- Executing and Recording the Loan Modification Agreement
- *Adjusting the Mortgage Loan Account-Post Mortgage Loan Modification*



- *Processing a Fannie Mae Flex Modification for a Mortgage Loan with Mortgage Insurance*
- *Handling Fees and Late Charges in Connection with a Fannie Mae Flex Modification*
- *Incentive Fees*
- Changes to Fannie Mae Streamlined Modification Post Disaster Forbearance and Fannie Mae Cap and Extend Modification for Disaster Relief

The italicized and underlined topics above have not been altered from policy within the Fannie Mae *Servicing Guide* as of the date of this Lender Letter. If there are changes to these topics after the date of this Lender Letter, the updated guidance will supersede the existing requirements.

### **Documentation Requirements**

If the mortgage loan is current or less than 90 days delinquent, the borrower must submit a complete BRP except as described below.

If the borrower submitted a complete BRP prior to the 90<sup>th</sup> day of delinquency, the servicer must use the information from the Uniform Borrower Assistance Form ([Form 710](#)), or equivalent, to determine borrower's hardship, total assets and income, and the servicer must evaluate the borrower for all workout options in accordance with *Servicing Guide* D2-3.1-01, Determining the Appropriate Workout Option, including the Fannie Mae Flex Modification.

If the mortgage loan is 90 or more days delinquent, a complete BRP is not required and the servicer may solicit an eligible borrower as described in *Soliciting the Borrower for a Fannie Mae Flex Modification*. In addition, a complete BRP is not required if the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months and the mortgage loan became 60 days delinquent after the interest rate adjustment.

NOTE: *For purposes of determining the submission date in connection with borrower's submission of a complete BRP, the servicer must use the date of the postmark or other independent indicator such as date and time stamp (electronic or otherwise).*

### **Determining Eligibility for a Fannie Mae Flex Modification**

In order to be eligible for a Fannie Mae Flex Modification, all of the criteria in the following table must be met.

✓	<b>Eligibility Criteria for a Fannie Mae Flex Modification</b>
	The mortgage loan must be a conventional first lien mortgage loan.
	A mortgage loan secured by a principal residence must be at least 60 days delinquent or, if the mortgage loan is current or less than 60 days delinquent, the servicer has determined that the borrower's monthly payment is in imminent default in accordance with <i>Servicing Guide</i> D2-1-02, Using Freddie Mac's Imminent Default Indicator.
	A mortgage loan secured by a second home or an investment property must be at least 60 days delinquent.
	The property securing the mortgage loan may be vacant or condemned.
	The mortgage loan must have been originated at least 12 months prior to the evaluation date for the mortgage loan modification.
	The mortgage loan must not be subject to: <ul style="list-style-type: none"> <li>• a recourse or indemnification arrangement under which Fannie Mae purchased or securitized the mortgage loan or that was imposed by Fannie Mae after the mortgage loan was purchased or securitized;</li> </ul>



✓	<b>Eligibility Criteria for a Fannie Mae Flex Modification</b>
	<ul style="list-style-type: none"> <li>• an approved liquidation workout option;</li> <li>• an active and performing forbearance plan or repayment plan, unless otherwise directed by Fannie Mae;</li> <li>• a current offer for another mortgage loan modification or other workout option; or</li> <li>• an active and performing modification Trial Period Plan.</li> </ul>
	The mortgage loan must not have been modified three or more times previously, regardless of the mortgage loan modification program or dates of prior mortgage loan modifications.
	The borrower must not have failed a Fannie Mae Flex Modification Trial Period Plan within 12 months of being evaluated for eligibility for another Fannie Mae Flex Modification.
	The mortgage loan must not have received a Fannie Mae Flex Modification and become 60 days or more delinquent within the first 12 months of the effective date of the mortgage loan modification without being reinstated.

If the eligibility criteria for a Fannie Mae Flex Modification is not satisfied, but the servicer determines there are acceptable mitigating circumstances, the servicer is authorized to offer a modification outside of these requirements by submitting a request to Fannie Mae through HSSN for review and obtaining prior approval from Fannie Mae.

If the borrower converts from a Trial Period Plan to an Unemployment Forbearance, the borrower may subsequently be eligible for a Fannie Mae Flex Modification upon successful completion of the Unemployment Forbearance and, if eligible, must be placed in a new Fannie Mae Flex Modification Trial Period Plan based on the delinquency status at the time of the evaluation for the Fannie Mae Flex Modification.

### **Determining Eligibility for a Fannie Mae Flex Modification for a Texas 50(a)(6) Mortgage Loan**

A Texas Section 50(a)(6) mortgage loan is eligible for a Fannie Mae Flex Modification if

- the requirements described in *Determining Eligibility for a Fannie Mae Flex Modification* are satisfied, and
- modified in accordance with applicable law.

If the servicer receives a notice from the borrower that a modification fails to comply with the Texas Section 50(a)(6) requirements, the servicer must immediately, but no later than seven business days after receipt, take the actions listed in the following table.

✓	<b>The servicer must...</b>
	Inform Fannie Mae's Legal department by submitting a <i>Non-Routine Litigation Form</i> ( <a href="#">Form 20</a> ) and include the borrower notice in its submission.
	Collaborate with Fannie Mae on the appropriate response, including any cure that may be necessary, within the 60-day time frame provided by requirements of Texas Section 50(a)(6).

### **Obtaining a Property Valuation**

The servicer must obtain a property valuation, which must not be more than 90 days old at the time the servicer evaluates the borrower for the mortgage loan modification, using one of the following:

- an exterior BPO;
- an appraisal;
- Fannie Mae's APS;
- Freddie Mac's AVM;



- a third-party AVM; or
- the servicer's own internal AVM, provided that
  - the servicer is subject to supervision by a federal regulatory agency, and
  - the servicer's primary federal regulatory agency has reviewed the model.

If Fannie Mae's APS, Freddie Mac's AVM, the third-party AVM, or the servicer's internal AVM does not render a reliable confidence score, the servicer must obtain an assessment of the property value utilizing an exterior BPO, an appraisal, or a property valuation method documented as acceptable to the servicer's federal regulatory supervisor. The property value assessment must be rendered in accordance with the FDIC's Interagency Appraisal and Evaluation Guidelines regardless of whether such guidelines apply to mortgage loan modifications.

The servicer must attach the valuation and documentation when submitting its proposed recommendation to Fannie Mae through HSSN.

### **Performing an Escrow Analysis**

The servicer must perform an escrow analysis prior to offering a Trial Period Plan. See *Administering an Escrow Account in Connection With a Mortgage Loan Modification* in *Servicing Guide B-1-01, Administering an Escrow Account and Paying Expenses* for additional information.

Any escrow account shortage that is identified at the time of the mortgage loan modification must not be capitalized and the servicer is not required to fund any existing escrow account shortage.

If applicable law prohibits the establishment of the escrow account, the servicer must ensure that the T&I premiums are paid to date.

### **Determining the Fannie Mae Flex Modification Terms**

The servicer must determine the post-modification MTMLTV ratio, which is defined as the gross UPB of the mortgage loan including capitalized arrearages, divided by the current value of the property.

The servicer must complete all the steps in the order shown in the following table to determine the borrower's new modified mortgage loan terms.

<b>Step</b>	<b>Action</b>
1	<p>Capitalize eligible arrearages.</p> <p>The following are considered as acceptable arrearages for capitalization:</p> <ul style="list-style-type: none"><li>• accrued interest,</li><li>• out-of-pocket escrow advances to third parties,</li><li>• any required escrow advances that will be paid to third parties by the servicer during the Trial Period Plan, and</li><li>• servicing advances paid to third parties in the ordinary course of business and not retained by the servicer, if allowed by state laws.</li></ul> <p><i>NOTE: 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 period not to exceed 60 months unless the borrower decides to pay</i></p>



Step	Action								
	<p><i>the amount up-front. Late charges may not be capitalized and must be waived if the borrower satisfies all conditions of the Trial Period Plan.</i></p> <p>See <i>Administering an Escrow Account in Connection With a Mortgage Loan Modification</i> in <i>Servicing Guide B-1-01, Administering an Escrow Account and Paying Expenses</i> for additional information.</p>								
2	<p>Set the modification interest rate to a fixed rate based on the requirements in the following table using the contractual interest rate in effect for the periodic payment due in the month of the evaluation date.</p> <table border="1" data-bbox="203 598 1526 1024"> <thead> <tr> <th data-bbox="203 598 755 640">If the mortgage loan is...</th> <th data-bbox="755 598 1526 640">Then the servicer must ...</th> </tr> </thead> <tbody> <tr> <td data-bbox="203 640 755 766">a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV less than 80%</td> <td data-bbox="755 640 1526 766">set the modified interest rate to the borrower's contractual interest rate.</td> </tr> <tr> <td data-bbox="203 766 755 892">a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV greater than or equal to 80%</td> <td data-bbox="755 766 1526 892">set the modified interest rate to the lesser of <ul style="list-style-type: none"> <li>• the Fannie Mae Standard Modification Interest Rate, or</li> <li>• the borrower's contractual interest rate.</li> </ul> </td> </tr> <tr> <td data-bbox="203 892 755 1024">an ARM or step-rate that has not reached its final interest rate</td> <td data-bbox="755 892 1526 1024">set the interest rate to the lesser of <ul style="list-style-type: none"> <li>• the Fannie Mae Standard Modification Interest Rate,</li> <li>• the final interest rate for the step-rate modification, or</li> <li>• the lifetime interest rate cap for the ARM .</li> </ul> </td> </tr> </tbody> </table>	If the mortgage loan is...	Then the servicer must ...	a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV less than 80%	set the modified interest rate to the borrower's contractual interest rate.	a fixed rate, including an ARM or step-rate that has reached its final interest rate with a post-modification MTMLTV greater than or equal to 80%	set the modified interest rate to the lesser of <ul style="list-style-type: none"> <li>• the Fannie Mae Standard Modification Interest Rate, or</li> <li>• the borrower's contractual interest rate.</li> </ul>	an ARM or step-rate that has not reached its final interest rate	set the interest rate to the lesser of <ul style="list-style-type: none"> <li>• the Fannie Mae Standard Modification Interest Rate,</li> <li>• the final interest rate for the step-rate modification, or</li> <li>• the lifetime interest rate cap for the ARM .</li> </ul>
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3	<p>Extend the term to 480 months from the modification effective date.</p> <p><i>NOTE: When the mortgage loan is secured by a property where the title is held as a leasehold estate, the term of the leasehold estate must not expire prior to the date that is five years beyond the new maturity date of the modified mortgage loan. In the event that the current term of the leasehold estate would expire prior to such date, the term of the leasehold estate must be renegotiated to satisfy this requirement for the mortgage loan to be eligible for the mortgage loan modification.</i></p>								
4	<p>Forbear principal if the post-modification MTMLTV ratio is greater than 100%, in an amount that is the lesser of</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio of 100% using the interest-bearing principal balance, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul>								
5	<p>Provide or increase principal forbearance based on the requirements in the following table.</p> <table border="1" data-bbox="203 1564 1526 1606"> <thead> <tr> <th data-bbox="203 1564 868 1606">If the mortgage loan is ...</th> <th data-bbox="868 1564 1526 1606">Then the servicer must ...</th> </tr> </thead> <tbody> <tr> <td data-bbox="203 1564 868 1606"></td> <td data-bbox="868 1564 1526 1606"></td> </tr> </tbody> </table>	If the mortgage loan is ...	Then the servicer must ...						
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Step	Action	
	<p>less than 90 days past due when the borrower submitted a complete BRP</p>	<p>provide or increase principal forbearance until a 20% P&amp;I payment reduction and a 40% HTI are achieved; however, the servicer must not forbear more than</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul> <p>NOTE: <i>Calculating the Housing Expense-to-Income Ratio provides instructions on this calculation.</i></p>
	<p>greater than or equal to 90 days past due and the borrower did not submit a complete BRP before the 90<sup>th</sup> day of delinquency</p> <p>NOTE: <i>If the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months, the mortgage loan became 60 days delinquent after the interest rate adjustment and the borrower did not submit a complete BRP, the servicer must use this portion of Step 5 for purposes of determining additional principal forbearance.</i></p>	<p>provide or increase principal forbearance until a 20% payment reduction is achieved; however, the servicer must not forbear more than</p> <ul style="list-style-type: none"> <li>• an amount that would create a post-modification MTMLTV ratio less than 80% using the interest-bearing principal balance, or</li> <li>• 30% of the gross post-modification UPB of the mortgage loan.</li> </ul>

NOTE: *Interest must not accrue on any principal forbearance. Principal forbearance is payable upon the earliest of the maturity of the mortgage loan modification, sale or transfer of the property, refinance of the mortgage loan, or payoff of the interest-bearing UPB.*

If the 20% payment reduction or 40% HTI targets are not achieved as described above, the mortgage loan remains eligible for a Fannie Mae Flex Modification if the monthly P&I payment satisfies the requirements below.

The following table lists additional Fannie Mae Flex Modification requirements.

✓	The Fannie Mae Flex Modification must result in...
	<p>A fixed rate mortgage loan.</p> <p>NOTE: <i>An ARM or interest-only mortgage loan must be converted to a fully amortizing mortgage loan and may not be a bi-weekly or daily simple interest mortgage loan.</i></p>



✓	<b>The Fannie Mae Flex Modification must result in...</b>	
	A monthly P&I payment as described in the following table.	
	<b>If, at the time of evaluation, the mortgage loan is...</b>	<b>Then the monthly P&amp;I payment must be...</b>
	current or less than 31 days delinquent	less than the borrower's pre-modification P&I payment.
	31 or more days delinquent	less than or equal to the pre-modification P&I payment.

When the servicer submits a request through HSSN for Fannie Mae's approval of a Fannie Mae Flex Modification based on borrower submission of a BRP, in accordance with applicable law it must:

- immediately provide the borrower with notice of the right to receive a copy of all appraisals and other valuations developed in connection with the mortgage loan modification, and
- provide the borrower a copy of all appraisals and other valuations developed in connection with the mortgage loan modification.

Prior to granting a permanent mortgage loan modification, the servicer must place the borrower in a Trial Period Plan using the new modified mortgage loan terms. See *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification*.

### **Calculating the Housing Expense-to-Income Ratio**

The borrower's monthly gross income is defined as the borrower's monthly income amount before any payroll deductions and includes the following items, as applicable:

- 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, rental income, and other income such as adoption assistance.

*NOTE: The servicer must not consider unemployment insurance benefits or any other temporary sources of income related to employment (such as severance payments), as part of the monthly gross income for mortgage loans being evaluated for a mortgage loan modification.*



The servicer must calculate the post-modification housing expense-to-income ratio depending upon the type of property, as described in the following table.

If the mortgage loan is secured by...	Then the servicer must...
a principal residence	<p>divide the borrower's monthly housing expense, which includes the following items (as applicable), by the borrower's monthly gross income:</p> <ul style="list-style-type: none"> <li>• P&amp;I;</li> <li>• property and flood insurance premiums;</li> <li>• real estate taxes;</li> <li>• ground rent;</li> <li>• special assessments;</li> <li>• HOA dues (including utility charges that are attributable to the common areas, but excluding any utility charges that apply to the individual unit);</li> <li>• co-op corporation fee (less the pro rata share of the master utility charges for servicing individual units that is attributable to the borrower's unit); and</li> <li>• any projected monthly escrow shortage payment.</li> </ul> <p>NOTE: <i>The servicer must exclude monthly MIPs from the monthly housing expense-to-income calculation.</i></p>
a second home	<p>add the monthly housing expense of the second home to the monthly housing expense on the borrower's principal residence and divide this amount by the borrower's monthly gross income.</p>
an investment property	<p>add any monthly net rental income on the subject property to the borrower's gross monthly income for purposes of calculating the post-modification housing expense-to-income ratio.</p> <ul style="list-style-type: none"> <li>• The net rental income (or net rental loss) on the subject property must be calculated as 75% of the monthly gross rental income, reduced by the monthly housing expense on the rental property.</li> <li>• Add any monthly negative net rental income (i.e., net rental loss) on the subject property to the monthly housing expense on the borrower's principal residence and divide this amount by the borrower's monthly gross income.</li> <li>• If the borrower currently is not receiving rental income on the subject property, the monthly housing expense on the subject property must be added to the monthly housing expense on the borrower's principal residence and then divided by the borrower's monthly gross income.</li> </ul>



## Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification

For an MBS mortgage loan, the servicer must also see *Conditions of a First and Second Lien Mortgage Loan Modification for an MBS Mortgage Loan* in *Servicing Guide D2-3.1-02, Working with an MBS Mortgage Loan for Certain Workout Options*.

The servicer must communicate with the borrower that the mortgage loan modification will not be binding, enforceable, or effective unless all conditions of the mortgage loan modification have been satisfied, which is when all of the following have occurred:

- the borrower has satisfied all of the requirements of the Trial Period Plan,
- the borrower has executed and returned a copy of the *Loan Modification Agreement* ([Form 3179](#)), and
- the servicer or Fannie Mae (depending upon the entity that is the mortgagee of record) executes and dates [Form 3179](#).

The servicer must use the applicable [Evaluation Notice](#) to document the borrower's Trial Period Plan. See *Sending a Notice of Decision on a Workout Option* in *Servicing Guide D2-2-05, Receiving a Borrower Response Package*, for requirements relating to the [Evaluation Notice](#), and the additional requirements provided in the table below.

If the mortgage loan modification is...	Then the servicer must send the Fannie Mae Flex Modification Trial Period Plan using the following Evaluation Notice...
based on an evaluation of a complete BRP, regardless of post-modification MTMLTV	Standard Modification Trial Period Plan Notice – based on MTMLTV ratio greater than or equal to 80%.
not based on an evaluation of a complete BRP and has a post-modification MTMLTV ratio less than 80%	Streamlined Modification Trial Period Plan Notice – based on MTMLTV ratio less than 80%.
not based on an evaluation of a complete BRP and has a post-modification MTMLTV ratio greater than or equal to 80%	Streamlined Modification Trial Period Plan Notice – based on MTMLTV ratio greater than or equal to 80%.

**NOTE:** *The servicer must make appropriate adjustments to the Evaluation Notices to reflect the terms of the Fannie Mae Flex Modification as calculated in accordance with Determining the Fannie Mae Flex Modification Terms, and to remove any provisions authorizing the borrower to submit a complete BRP to be evaluated for another modification.*

The servicer must use the applicable [Evaluation Notice](#) and include the payment due date as required in the following table.

If the servicer mails the Evaluation Notice...	Then the servicer...
on or before the 15th day of a calendar month	must use the first day of the following month as the first Trial Period Plan payment due date.
after the 15th day of a calendar month	must use the first day of the month after the next month as the first Trial Period Plan payment due date.



The following table provides the requirements for the length of the Trial Period Plan, which must not change even if the borrower makes scheduled payments earlier than required.

If the mortgage loan at the time of evaluation is...	Then the Trial Period Plan must be...
current or less than 31 days delinquent	four months long.
31 or more days delinquent	three months long.

If the borrower fails to make a Trial Period Plan payment by the last day of the month in which it is due, the borrower is considered to have failed the Trial Period Plan and the servicer must not grant the borrower a permanent Fannie Mae Flex Modification.

The servicer must see *Servicing Guide* E-3.4-01, Suspending Foreclosure Proceedings for Workout Negotiations for the requirements for suspending foreclosure.

### **Soliciting the Borrower for a Fannie Mae Flex Modification**

Except as noted below, if the mortgage loan is 90 or more days delinquent and the servicer determines that the borrower is eligible for a Fannie Mae Flex Modification and at least one of the following circumstances are met, the servicer must mail the borrower a Fannie Mae Flex Modification Solicitation Letter with the appropriate *Evaluation Notice* between the 90th and 105th day of delinquency:

- the borrower did not submit a complete BRP before the 90<sup>th</sup> day of delinquency;
- prior to sending the Fannie Mae Flex Modification Solicitation Letter, the servicer previously conducted an evaluation of the complete BRP and determined that the borrower was not eligible for a workout option in accordance with the *Servicing Guide*; or
- the borrower has rejected all other alternatives to foreclosure offered by the servicer.

*NOTE: If the mortgage loan was previously modified into a mortgage loan with a step-rate feature, an interest rate adjustment occurred within the last 12 months and the mortgage loan became 60 days delinquent after the interest rate adjustment, and the servicer determines that the borrower is eligible for a Fannie Mae Flex Modification without a complete BRP, the servicer must mail the borrower a Fannie Mae Flex Modification Solicitation Letter between the 60th and 75th day of delinquency.*

If for any reason the servicer fails to send the Fannie Mae Flex Modification solicitation letter within the prescribed time frame, it must send the solicitation as soon as possible thereafter.

While the borrower remains eligible for a Fannie Mae Flex Modification if a payment is received following the borrower evaluation or solicitation that results in the mortgage loan subsequently becoming less than 90 days delinquent (or less than 60 days delinquent if the mortgage loan was previously modified into a mortgage loan with a step-rate feature and an interest rate adjustment occurred within the last 12 months), the servicer must ensure that the mortgage loan is at least 30 days or more delinquent prior to the commencement of the Fannie Mae Flex Modification Trial Period Plan.

The servicer is authorized to use the [Streamlined Modification Solicitation Letter](#) for the Fannie Mae Flex Modification solicitation letter and make appropriate adjustments to comply with the requirements of this Lender Letter.



The servicer must send the applicable *Trial Period Plan Evaluation Notice* to the borrower with the Fannie Mae Flex Modification solicitation letter. See *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification* for additional information on the Fannie Mae Flex Modification Solicitation Letter, and Trial Period Plan Evaluation Notice.

The servicer is authorized to continue proactive solicitation for a Fannie Mae Flex Modification at its discretion, but must not solicit a borrower if the property has a scheduled foreclosure sale date within 60 days of the evaluation date if the property is in a judicial state, or within 30 days of the evaluation date if the property is in a non-judicial state.

## Handling a Complete Borrower Response Package

The servicer must process a BRP in accordance with the *Servicing Guide* and applicable law.

The servicer must acknowledge receipt of the BRP in accordance with *Acknowledging Receipt of a Borrower Response Package* in *Servicing Guide D2-2-05, Receiving a Borrower Response Package* and provide any Incomplete Information Notice, if applicable, in accordance with *Sending a Notice of Incomplete Information* in *Servicing Guide D2-2-05, Receiving a Borrower Response Package*.

If the borrower submits a complete BRP when the mortgage loan is 90 or more days delinquent, the servicer must evaluate the borrower for all workout options in accordance with *Servicing Guide D2-3.1-01, Determining the Appropriate Workout Option*, as described in this Lender Letter.

The following table provides the servicer's requirements if the borrower submitted a complete BRP prior to the 90th day of delinquency but the servicer received the complete BRP after soliciting the borrower for a Fannie Mae Flex Modification in accordance with *Soliciting the Borrower for a Fannie Mae Flex Modification*. See *Documentation Requirements* to determine the submission date of a complete BRP.

If the borrower submitted a complete BRP prior to the 90th day of delinquency, and the servicer receives the complete BRP...	Then the servicer must...
prior to mailing the Flex Modification Solicitation Letter	review the BRP in accordance with <i>Servicing Guide D2-2-05, Receiving a Borrower Response Package</i> , and evaluate the borrower for all workout options in accordance with <i>Chapter D2-3, Fannie Mae's Home Retention and Liquidation Workout Options</i> , including the Fannie Mae Flex Modification based on borrower submission of a complete BRP.
after mailing the Flex Modification Solicitation Letter and prior to mailing the Flex Loan Modification Agreement to the borrower for signature	either <ul style="list-style-type: none"> <li>• evaluate the borrower for all workout options in accordance with <i>Chapter D2-3, Fannie Mae's Home Retention and Liquidation Workout Options</i>, including the Fannie Mae Flex Modification based on borrower submission of a complete BRP, if the borrower has not accepted the Flex Modification Solicitation offer, or</li> <li>• re-evaluate the borrower for a Fannie Mae Flex modification based on borrower submission of a complete BRP if the borrower has accepted the Flex Modification Solicitation offer               <ul style="list-style-type: none"> <li>○ If the P&amp;I payment amount based on borrower submission of a complete BRP is less than the P&amp;I</li> </ul> </li> </ul>



If the borrower submitted a complete BRP prior to the 90th day of delinquency, and the servicer receives the complete BRP...	Then the servicer must...
	payment amount reflected in the solicitation Trial Period Plan, inform the borrower that if he or she makes the Trial Period Plan payments in accordance with the plan, the mortgage loan will be permanently modified with the lower P&I payment amount which will be reflected in the Loan Modification Agreement.

## Preparing the Loan Modification Agreement

The servicer must prepare the Loan Modification Agreement early enough in the Trial Period Plan to allow sufficient processing time so that the mortgage loan modification becomes effective on the first day of the month following the Trial Period Plan (modification effective date). The servicer is authorized to, at its discretion, complete the Loan Modification Agreement so the mortgage loan modification becomes effective on the first day of the second month following the final Trial Period Plan payment to allow for sufficient processing time. However, the servicer must treat all borrowers the same in applying this option by selecting, at its discretion and as evidenced by a written policy, the date by which the final Trial Period Plan payment must be submitted before the servicer applies this option (“cut-off date”). The cut-off date must be after the due date for the final Trial Period Plan payment as set forth in the [Evaluation Notice](#).

*NOTE: If the servicer elects this option, the borrower will not be required to make an additional Trial Period Plan payment during the month (the “interim month”) in between the final Trial Period Plan month and the month in which the mortgage loan modification becomes effective. For example, if the last Trial Period Plan month is March and the servicer elects the option described above, the borrower is not required to make any payment during April, and the mortgage loan modification becomes effective, and the first payment under the Loan Modification Agreement is due, on May 1.*

The servicer must use the *Form Modification Cover Letter* to communicate a borrower's eligibility for a permanent Fannie Mae Flex Modification, which must be accompanied by a completed [Form 3179](#). The servicer must incorporate into the Loan Modification Agreement ([Form 3179](#)) the applicable provisions in accordance with the requirements in *Summary: Modification Agreement Form 3179*.

The servicer must ensure that the modified mortgage loan retains its first lien position and is fully enforceable in accordance with its terms.

Electronic documents and signatures for Fannie Mae Flex Modifications are acceptable as long as the electronic record complies with Fannie Mae's requirements. See *Servicing Guide A2-5.2-01, Storage of Individual Mortgage Loan Files and Records for Fannie Mae's requirements for electronic records*.

The servicer must follow the procedures in *Executing and Recording the Loan Modification Agreement, and Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification* in this Lender Letter for preparing, executing, and recording [Form 3179](#) and adjusting the mortgage loan account upon completion of the mortgage loan modification. The servicer must also follow the procedures in *Loan Modifications for an eMortgage* in *Servicing Guide F-1-38, Servicing eMortgages* for additional requirements when the modified mortgage loan is an eMortgage.



## Executing and Recording the Loan Modification Agreement

The servicer is responsible for ensuring that the mortgage loan as modified complies with applicable laws, preserves Fannie Mae's first lien position, and is enforceable against the borrower(s) in accordance with its terms. In order to ensure that the modified mortgage loan retains its first lien position and is fully enforceable, the servicer must take the actions described in the following table.

✓	<b>The servicer must...</b>
	<p>Ensure that the Loan Modification Agreement is executed by the borrower(s).</p> <p><i>NOTE: The servicer may encounter circumstances where a co-borrower signature is not obtainable for the Loan Modification Agreement, for reasons such as mental incapacity or military deployment. When a co-borrower's signature is not obtainable and the servicer decides to continue with the mortgage loan modification, the servicer must appropriately document the basis for the exception in the servicing records.</i></p>
	<p>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, condo/HOA fees, utility assessments (such as water bills), ground rent, and other assessments.</p>
	<p>Obtain a title endorsement or similar title insurance product issued by a title insurance company if the modification agreement will be recorded.</p>
	<p>Record the executed Loan Modification Agreement if:</p> <ul style="list-style-type: none"> <li>• recordation is necessary to ensure that the modified mortgage loan retains its first lien position and is enforceable in accordance with its terms at the time of the modification, throughout its modified term, and during any bankruptcy or foreclosure proceeding involving the modified mortgage loan; or</li> <li>• the Loan Modification Agreement includes assignment of leases and rents provisions.</li> </ul>

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, the servicer must also 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 mortgage loan modification, in order to preserve Fannie Mae's lien status for the entire amount owed. See *Identifying Manufactured Home Mortgage Loans* in *Servicing Guide A2-5.1-02, Overview of Individual Mortgage Loan Files and Records* for additional information regarding collateral documents.

The servicer must execute and record the Loan Modification Agreement based upon the entity that is the mortgagee of record in accordance with *Servicing Guide A2-1-03, Execution of Legal Documents*. In addition, the servicer must send the Loan Modification Agreement to the document custodian if the mortgagee of record is

- the servicer;
- MERS; or
- Fannie Mae, and Fannie Mae has given the servicer an Limited Power of Attorney that allows it to execute this type of document on Fannie Mae's behalf.



NOTE: If Fannie Mae's DDC is the custodian, the documents must be annotated with the Fannie Mae loan number and, if applicable, the MERS number, and mailed to The Bank of New York Mellon Trust Company, NA (see Servicing Guide F-4-03, List of Contacts).

When the servicer is required to send the Loan Modification Agreement to the document custodian, the servicer must follow the requirements outlined in the following table.

If the Loan Modification Agreement...	Then the servicer must...
is required to be recorded	<ul style="list-style-type: none"> <li>• send a certified copy of the fully executed Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower, and</li> <li>• send the original Loan Modification Agreement that is returned from the recorder's office to the document custodian within 5 business days of receipt.</li> </ul>
is not required to be recorded	send the fully executed original Loan Modification Agreement to the document custodian within 25 days of receipt from the borrower.

### Adjusting the Mortgage Loan Account Post-Mortgage Loan Modification

After a mortgage loan modification is executed, the servicer must adjust the mortgage loan as described in the following table.

✓	The servicer must...
	For a portfolio mortgage loan, add any amounts to be capitalized 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.  NOTE: <i>The servicer may request reimbursement from Fannie Mae when any of its costs are capitalized.</i>
	Revise the borrower's payment records to provide for collection of the modified payment.
	Apply any funds that <ul style="list-style-type: none"> <li>• the borrower deposited with the servicer as a condition of the mortgage loan modification,</li> <li>• have been deposited on behalf of the borrower in connection with the mortgage loan modification, or</li> <li>• the mortgage insurer contributed in connection with the mortgage loan modification.</li> </ul> NOTE: <i>Amounts due for repayment of principal, interest, or advances must be remitted promptly to Fannie Mae. The remaining funds may be used to clear any advances made by the servicer or to credit the borrower's escrow deposit account.</i>
	Determine if it must change the servicing fee in accordance with <i>Servicing Guide A2-3-02, Servicing Fees for Portfolio and MBS Mortgage Loans.</i>

### Processing a Fannie Mae Flex Modification for a Mortgage Loan with Mortgage Insurance

For purposes of the Fannie Mae Flex Modification, the servicer must refer to *Servicing Guide F-2-07, Mortgage Insurer Delegations for Workout Options*, for the list of conventional mortgage insurers from which Fannie Mae has obtained



delegation of authority on behalf of all servicers. The Fannie Mae Streamlined Modification delegations also apply to the Fannie Mae Flex Modification.

### **Handling Fees and Late Charges in Connection with a Fannie Mae Flex Modification**

The servicer must not charge the borrower administrative fees.

The servicer is authorized to assess late charges during the Trial Period Plan. The servicer must waive all late charges, penalties, stop payment fees, or similar charges upon the borrower's conversion to a permanent mortgage loan modification.

The servicer must follow the procedures in *Requesting Reimbursement for Expenses Associated with Workout Options* in *Servicing Guide F-1-06*, Expense Reimbursement for advancing funds and requesting reimbursement.

### **Incentive Fees**

The servicer is eligible for incentive fees in accordance with *Servicing Guide F-2-03*, Incentive Fees for Workout Options as described for a Fannie Mae Streamlined Modification.

### **Changes to Fannie Mae Streamlined Modification Post Disaster Forbearance and Fannie Mae Cap and Extend Modification for Disaster Relief**

The requirements described in *Determining the Fannie Mae Flex Modification Terms* above will replace the requirements in *Servicing Guide F-1-23*, Processing a Fannie Mae Streamlined Modification Post Disaster Forbearance, *Determining the New Modified Mortgage Loan Terms* and *Servicing Guide F-1-17*, Processing a Fannie Mae Cap and Extend Modification for Disaster Relief, *Determining the New Modified Mortgage Loan Terms* as specified below. The servicer must use the Streamlined Modification Post-Disaster Forbearance Trial Period Plan Evaluation Notice, and make appropriate adjustments as described in *Offering a Trial Period Plan and Completing a Fannie Mae Flex Modification*. The servicer must implement these changes to both disaster modifications concurrently with the implementation of the Fannie Mae Flex Modification and as described in the following table.

<b>The requirements for...</b>	<b><i>Determining the New Modified Mortgage Loan steps...</i></b>	<b>Are replaced with the following steps in <i>Determining the Fannie Mae Flex Modification Terms...</i></b>
Fannie Mae Streamlined Modification Post Disaster Forbearance	2 and 4	2, 4 and 5.
Fannie Mae Cap and Extend Modification for Disaster Relief	2	2.

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Please contact your Servicing Consultant, Portfolio Manager, or Fannie Mae's Single-Family Servicing Servicer Support Center at 1-800-2FANNIE (1-800-232-6643) with any questions regarding this Lender Letter.

Malloy Evans  
Vice President  
Single-Family Servicing