

## **Selling Guide Announcement SEL-2012-08**

September 11, 2012

### **New Lender Selling Representations and Warranties Framework**

Historically, many issues related to compliance with Fannie Mae's underwriting and eligibility requirements were not detected until after loans became delinquent or the foreclosure process was completed. Given the increase in loan delinquencies and foreclosures, loan repurchase requests have increased over the past several years, highlighting the need for a better approach for working with seller/servicers (referred to as "lenders" in this Announcement) to deliver loans that meet Fannie Mae's underwriting and eligibility requirements. Going forward, a better approach requires a number of steps, including underwriting standards that promote sustainable homeownership and the collection of more accurate and consistent information about the loans acquired. Fannie Mae and Freddie Mac (the GSEs), under the direction of the Federal Housing Finance Agency (FHFA), have laid one of the foundations for such an approach through the Uniform Mortgage Data Program<sup>®</sup> for the electronic collection of accurate, consistent, and high-quality loan and appraisal data.

Representations and warranties are a long-standing means for enhancing liquidity in the mortgage origination process while protecting the GSEs from acquiring loans that do not meet prescribed standards. Representations and warranties are a lender's assurance to the GSE that the GSE can rely on certain facts and circumstances concerning the lender and the mortgage loans it is selling. Representations and warranties required by Fannie Mae are described in the *Mortgage Selling and Servicing Contract*, the *Selling and Servicing Guides*, and other Lender Contracts. Violation of any representation and warranty is a breach of the Lender Contract, entitling Fannie Mae to pursue certain remedies, including a loan repurchase request.

With better data and improved loan quality, the GSEs have been working with FHFA to develop a framework that will provide lenders a higher degree of certainty and clarity around repurchase exposure as well as consistency around repurchase timelines and remedies. The resulting work product is a new construct for certain lender selling representations and warranties relating to the underwriting and eligibility of loans delivered to the GSEs commencing in 2013.

In adopting this new framework, the GSEs are not modifying the representations and warranties currently in effect, nor are they discharging a lender from the responsibility for underwriting and delivering quality loans in accordance with the acquiring GSE's requirements. Instead, the new framework will provide lenders with relief from Fannie Mae's enforcement of remedies for breaches of certain underwriting and eligibility representations and warranties for new loan acquisitions commencing in 2013 that meet specific payment history requirements.

### **Brief Description of the New Framework**

For conventional loans that are acquired by Fannie Mae on a flow basis on or after January 1, 2013, the lender will be relieved of its obligation to remedy mortgage loans that are in breach of certain underwriting and eligibility representations and warranties if the borrower meets one of two payment history requirements and the other eligibility criteria described under "Eligible Mortgage Loans" below. No relief will be available for breaches of certain "life of loan" representations and warranties, regardless of the borrower's payment history.

## Related Changes to the Quality Control Process

Integral to the new representation and warranty framework is the quality control review process and enforcement of violations. For a preview of potential changes to Fannie Mae's quality control processes, see [Lender Letter LL-2012-05, \*Fannie Mae's Quality Control Process\*](#).

## Relief of Underwriting Representations and Warranties

With respect to an eligible mortgage loan (as defined below), a lender will be relieved of the requirement to remedy a mortgage loan (e.g., by a repurchase or a make-whole payment remittance) if that mortgage loan violates Fannie Mae's single-family underwriting and eligibility requirements set forth in the applicable parts of the Fannie Mae *Selling Guide* and other Lender Contracts relating to:

- underwriting the borrower, which includes the lender's assessment of the borrower's loan terms, credit history, employment and income, assets, and other financial information used for qualifying the borrower for the loan;
- underwriting the subject property, which includes the lender's analysis of the description and valuation of the property to determine its adequacy as collateral for the mortgage transaction; and
- underwriting the project in which the property is located, which includes the analysis of the PUD, condo, or co-op project in accordance with Fannie Mae's requirements.

The following subparts of the *Selling Guide* are covered by the relief:

- Subpart B1, Loan Application Package;
- Subpart B2, Eligibility;
- Subpart B3, Underwriting Borrowers;
- Subpart B4, Underwriting Property; and
- Subpart B5, Unique Eligibility and Underwriting Considerations.

**Note:** *Fannie Mae may be subject to third-party claims, including, but not limited to, those made by or on behalf of borrowers or MBS investors. Notwithstanding the relief provided by the framework described in this Announcement, the lender's indemnification obligations with respect to third-party claims continue in full force and effect. See the Selling Guide, A2-1-03, Indemnification for Losses, for a description of the indemnification obligations which continue.*

## Eligible Mortgage Loans

To be eligible for the new representation and warranty framework, a mortgage loan must meet the following requirements:

- A. The mortgage loan must have a January 1, 2013 or later acquisition date:
  - whole loans purchased on or after January 1, 2013, or
  - mortgage loans delivered into MBS with issue dates of January 1, 2013 or later.
- B. The mortgage loan must meet one of the following payment history requirements:
  - The borrower was not 30 days delinquent during the 36 months following the acquisition date, or for Refi Plus™ and DU Refi Plus™ mortgage loans, the borrower was not 30 days delinquent during the 12 months following the acquisition date; or

- The borrower (i) had no more than two 30-day delinquencies and no 60-day or greater delinquencies, during the 36 months following the acquisition date; and (ii) was current as of the 60th month following the acquisition date.

With the exception of mortgage loans with temporary buydowns, neither the lender nor a third party with a financial interest in the performance of the loan (e.g., mortgage broker, correspondent lender, mortgage insurer) can escrow or advance funds on behalf of the borrower to be used for payment of any principal or interest payable under the terms of the mortgage loan for the purpose of satisfying the payment history requirement.

- C. The mortgage loan must be a conventional mortgage loan (including Refi Plus and DU Refi Plus loans) sold to Fannie Mae on a flow basis.
- Government-guaranteed or -insured loans are not eligible for inclusion under the framework.
  - Non-flow, seasoned, or bulk mortgages may be eligible for inclusion under the framework only on a negotiated basis.
- D. The mortgage loan cannot have been sold to Fannie Mae with any credit enhancement other than traditional primary mortgage insurance (i.e., lender- or borrower-paid mortgage insurance).
- Mortgage loans with credit enhancement other than traditional primary mortgage insurance may be eligible for inclusion under the framework only on a negotiated basis.
- E. The mortgage loan cannot have been subject to a forbearance agreement, repayment plan, or otherwise have been modified from its original terms during the applicable qualifying pay history period referenced in item B above.
- F. With the exception of certain loans purchased under the terms of a long-term standby purchase commitment, the loans cannot have had any delinquencies between the origination date and the Fannie Mae acquisition date.
- For loans classified as “Class 1 Mortgage Loans” or “Class 4 Mortgage Loans” that are purchased under a long-term standby purchase commitment (LTSC), the payment history requirement will be measured from the date the loan was committed under the LTSC structure (that is, the 12-, 36-, or 60-month timeframe will begin on the date the loan was committed into the LTSC).
- G. The mortgage loan must not be subject to an outstanding request for repurchase, repurchase alternative, or make-whole payment.

**Note:** Unless otherwise agreed to by Fannie Mae and the lender, once a mortgage loan has qualified for the new representation and warranty framework by compliance with the requirements A through G above, its eligibility for the new framework is final and irrevocable subject to the life of loan exclusions.

## Exclusions - Life of Loan Representations and Warranties

A lender will not be relieved from the enforcement of breaches of its representations and warranties on any mortgage loan, including eligible mortgage loans, with respect to the following matters even if those matters are addressed in Subparts B1 through B5 of the *Selling Guide*. With respect to each mortgage loan, a lender remains responsible for the life of loan representations and warranties related to the following, as more fully described below:

- Fannie Mae Charter Matters;
- Misstatements, Misrepresentations, Omissions, and Data Inaccuracies;
- Clear Title/First-Lien Enforceability;
- Compliance with Laws and Responsible Lending Practices; and
- Single-Family Mortgage Product Eligibility.

## ***Fannie Mae Charter Matters***

A mortgage loan (or any participation interest therein) must meet all of the following requirements to be eligible for sale to Fannie Mae in accordance with its Charter:

- A. Be secured by property that is residential in nature. Properties that are **not** residential include, but are not limited to, vacant land, property primarily used for agricultural or commercial purposes, or units located in condo or co-op hotels.
- B. Be secured by a property located within the 50 states of the United States of America, the District of Columbia, or any territory or possession of the United States.
- C. Be secured by a property with four or fewer units, unless sold through Fannie Mae's multifamily mortgage business.
- D. Have an original principal balance not greater than the applicable maximum loan limit in effect at the time of Fannie Mae's acquisition.
- E. Have a loan-to-value (LTV) ratio of 80% or less of the security property's value at the time Fannie Mae acquires the loan or, if the mortgage has an LTV ratio in excess of 80%, the mortgage
  - has mortgage insurance on the portion of the mortgage in excess of 80% of the property's value (or for DU Refi Plus and Refi Plus mortgage loans, otherwise meets Fannie Mae's requirements), provided by a mortgage insurer approved under Fannie Mae's Qualified Mortgage Insurer Approval Requirements;
  - was sold with recourse for such period and under such circumstances as Fannie Mae may require; or
  - was sold on a participation basis where the lender retains a minimum 10% interest.

### **Example**

An illustrative example of a breach of Charter requirements:

- A mortgage loan secured by a property that consists of a principal residence and a dairy farm, resulting in the property having significant nonresidential use.

## ***Misstatements, Misrepresentations, Omissions, and Data Inaccuracies***

- A. There must not have been any misstatement, misrepresentation, or omission by any party (including, but not limited to, borrowers, property sellers, builders, real estate agents, lenders including the selling lender, mortgage brokers, loan officers, originators, appraisers, appraisal companies, closing agents, title companies or other third-party vendors performing origination services) pertaining to the borrower, the property, or the project as set forth in Subpart B1 through B5 of the *Selling Guide* that:

- involved two or more mortgages or related real estate transactions, and
- was made by two or more of the aforementioned parties.

For purposes of this paragraph, the lender's knowledge of the misstatement, misrepresentation, or omission is irrelevant.

- B. Additionally, there must not be delivery data (ULDD) inaccuracies that resulted from the lender's failure to properly implement, monitor, or maintain its data capture and delivery process or system, if the data pertains to the borrower, the property, or the project, if and to the extent:
  - such delivery data differs from the information documented in the mortgage loan files that were used by the lender to determine mortgage loan eligibility,

- the information documented in the mortgage loan files indicates that the loans were not eligible on the terms delivered for acquisition by Fannie Mae, and
- multiple mortgage loans were involved.

**Note:** *Prior to satisfaction of the applicable payment history requirements, mortgage loans are subject to Fannie Mae's standard requirements related to fraud, misrepresentation, or misstatement as described in the Selling Guide, A3-4-03, Preventing, Detecting, and Reporting Mortgage Fraud.*

*Lenders continue, at all times, to be responsible for any fraud, misrepresentation, or misstatement in connection with a matter not addressed in Subparts B1 through B5 of the Selling Guide.*

## Examples

The following examples illustrate some instances of misstatements, misrepresentations, omissions, and data inaccuracies.

- An omission where the lender may be required to repurchase the mortgage loan even if the loan is otherwise eligible for relief:

A realtor and a property developer decide that in order to sell several new homes faster, they provide several borrowers with a \$15,000 rebate outside of closing that was not disclosed in the sales contract or HUD-1 Settlement Statement. This practice is in violation of Fannie Mae's undisclosed interested party contributions policy. In this instance, the lender *must* repurchase the loans, if requested, even if the loans are otherwise eligible for relief.

- A misrepresentation where the lender will not be required to repurchase the mortgage loan:

A borrower borrows \$10,000 from his friend as part of a down payment on a home. He has promised to pay his friend back with interest. The borrower provides a falsified gift letter to the lender. After 36 timely payments, the lender would *not* be required to repurchase the loan even if the lender subsequently discovered that part of the down payment was borrowed because the borrower's misstatement to the lender affected only one loan.

- Fraudulent conduct where the lender will be required to repurchase the mortgage loan:

A lender sells a mortgage loan to Fannie Mae. The lender then sells that same mortgage loan to another investor. Upon discovery of this, Fannie Mae requires the lender to repurchase the loan even though the loan is otherwise eligible for relief.

- Data inaccuracies:

Example 1: As a result of a system upgrade, a coding error is introduced into a lender's system such that the representative credit score is incorrectly calculated and the lender reports inaccurate representative credit scores at loan delivery. A review of the credit reports in the lender's origination files shows that for multiple mortgages the actual representative credit scores were lower than those reflected in the data provided at delivery and the actual representative credit scores did not meet Fannie Mae's eligibility requirements. The lender would be responsible for remedying the systemic error, and may be required to repurchase the affected loans.

Example 2: The lender significantly reduces its data delivery quality control staff and as a result, multiple mortgages are delivered as eligible condos when the loans were not eligible for delivery. The lender is responsible for maintaining adequate staff and system controls to ensure that the loan-level data that is being reported to Fannie Mae (and ultimately mortgage loan investors) is true, correct, and complete. The lender would be responsible for remedying the systemic error, and may be required to repurchase the affected loans.

## ***Clear Title/First-Lien Enforceability***

A mortgage loan must:

- A. Be sold by a lender who was the sole owner and holder of the mortgage loan and had the full right and authority to sell and assign it or a participation interest therein, to Fannie Mae. The lender's right to sell or assign the mortgage loan cannot be subject to any other party's interest or to an agreement with any other party.
- B. Be a valid and subsisting first lien enforceable in accordance with its terms (with no pending condemnation or other legal proceedings) and that otherwise meets Fannie Mae's requirements for loan documents.
- C. Have a mortgagee policy of title insurance meeting Fannie Mae's requirements, or other title evidence acceptable to Fannie Mae. Lenders continue to be responsible for all warranties related to title, marketability, and lien position, regardless of whether included or excluded by coverage under a mortgagee policy of title insurance. Any defect shown on the title policy would not be considered to be an acceptable minor impediment if there was additional cost or delay involved in curing such defect.
- D. Permit foreclosure or other enforcement of the note holder's rights under the loan documents and acquisition of good and marketable title to the underlying security property without incurring any expenses or delays as a result of any matters affecting title to the property, including legal or land use restrictions or other defects relating to the land or location of the improvements.

### **Examples**

Illustrative examples of a breach of these Clear Title/First-Lien Enforceability requirements include, but are not limited to, the following:

- Another party, such as warehouse lender, asserts a claim to or interest in the loan.
- Fannie Mae is unable to obtain clear title to the property because it is not in first-lien position.
- The lender fails to properly endorse the note or to adhere to requirements for the use of powers of attorneys.
- A mortgage loan is delivered to Fannie Mae with a PACE loan secured by the same property and the mortgage loan does not meet Fannie Mae's eligibility requirements for mortgages delivered with PACE loans.
- Improvements that were included in the appraised value of the property do not fall totally within the property's boundaries or building restriction lines and that were not otherwise permitted encroachments under the terms of the *Selling Guide*.
- A mortgage loan is delivered to Fannie Mae that is secured by a property encumbered by private transfer fee covenants that do not meet Fannie Mae's requirements.

## ***Compliance with Laws and Responsible Lending Practices***

A mortgage loan must be originated:

- A. In compliance with applicable laws and regulations as set forth in the *Selling Guide*, A3-2-01, Compliance with Laws.
- B. In accordance with Fannie Mae's responsible lending policies as set forth in the *Selling Guide*, A3-2-02, Responsible Lending Practices.
- C. In compliance with policies adopted by Fannie Mae to implement or comply with Directives or regulations issued by FHFA. Fannie Mae will maintain a list of such requirements in the *Selling Guide*.

## Examples

Illustrative examples of breach of these Compliance with Laws and Responsible Lending Practices requirements include, but are not limited to, the following:

- The appraisal for a mortgage loan does not conform to the Appraiser Independence Requirements.
- A mortgage loan is secured by a unit in a condo project that was not created in compliance with applicable state law.
- A mortgage loan has a borrower that is an *inter vivos* revocable trust that was not formed in accordance with applicable law.
- A Texas Section 50(a)(6) mortgage loan was not originated in accordance with Texas law.

### **Single-Family Mortgage Product Eligibility**

Certain mortgage loan products or features may be ineligible for sale to Fannie Mae from time to time, unless otherwise agreed to in writing by Fannie Mae. Examples include:

- A. Mortgages that are not in first-lien position;
- B. Reverse mortgages;
- C. Balloon loans;
- D. Loans for which the borrower is not
  - an individual (other than an *inter vivos* revocable trust), or
  - a U.S. citizen or lawful permanent or non-permanent resident of the United States;
- E. Loans that are not secured by interests in real property, including manufactured homes titled as chattel property, houseboats, timeshares and other segmented ownership projects;
- F. Loans secured by properties located in the Commonwealth of the Northern Mariana Islands; and
- G. Loans with adjustable-rate mortgage plans other than those listed in the [Standard ARM Plan Matrix](#) on eFannieMae.com.

### **Automatic Repurchase Trigger**

Any mortgage loan for which no full monthly payment is made for the first three months after acquisition by Fannie Mae will be subject to an automatic repurchase request. However, the lender may request an exception to the automatic repurchase requirement if there were unforeseen extenuating circumstances that caused the borrower to default after the loan was acquired by Fannie Mae. Fannie Mae in its sole discretion may agree to rescind the repurchase request after a loan file review to determine that the loan otherwise meets Fannie Mae's requirements.

### **Selling Guide Updates**

Specific changes related to the adoption of the new representation and warranty framework will be made to the *Selling Guide* later this year.

\*\*\*\*\*



Lenders who have questions about this Announcement should contact their Account Team.

John Forlines  
Senior Vice President  
Chief Credit Officer for Single-Family