

Servicing Guide Announcement SVC-2012-19

August 22, 2012

Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure Requirements

This Announcement introduces new requirements for the Fannie Mae short sale and deed-in-lieu of foreclosure processes as part of the Servicing Alignment Initiative. These new requirements implement and are consistent with the aligned policies described in Federal Housing Finance Agency's July 3, 2012 Directive to Fannie Mae and Freddie Mac to help simplify and streamline the short sale and deed-in-lieu of foreclosure processes. As part of this update, Fannie Mae is renaming the Fannie Mae preforeclosure sale program to standard short sale/HAFA II, which is a separate offering from the Fannie Mae HAFA program. In addition, Fannie Mae is replacing all references to the term "preforeclosure sale" with "short sale."

Except as noted in this Announcement, all other requirements provided in the *Servicing Guide* remain unchanged.

Servicers must follow the policies and procedures outlined in this Announcement for delinquency management and default prevention for all conventional mortgage loans:

- held in Fannie Mae's portfolio,
- mortgage loans sold to Fannie Mae for cash and subsequently securitized into MBS pools (known as Pooled from Portfolio or PFP mortgage loans), and
- mortgage loans that are part of an MBS pool serviced under the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property

While Fannie Mae does not require that its foreclosure prevention alternatives be used for regular servicing option MBS mortgage loans, shared-risk MBS pool for which the servicer markets the acquired property, or any other mortgage loans sold to Fannie Mae under a recourse or other credit enhancement arrangement, Fannie Mae encourages servicers to use them for these mortgage loans. However, when the servicer decides to use Fannie Mae's foreclosure prevention alternatives for such mortgage loans, Fannie Mae is not responsible for any losses or expenses the servicer incurs when applying the requirements in this Announcement. In addition, Fannie Mae will not pay servicer incentive fees in connection with foreclosure prevention alternatives on such mortgage loans.

This Announcement covers the following topics:

- Effective Date
- Standard Short Sales/HAFA II
- Borrower Eligibility
- Mortgage Loans in Imminent Default
- Streamlined Documentation Requirements Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure
- New Mortgage Loans Obtained During Hardship
- Evaluation for Borrower Contribution
- Determining the Market Value of the Property

- Evaluating Short Sale Offers
- Providing Property List Price Guidance
- Mortgage Insurer Approval Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure
- Allowable Subordinate-Lien Payments Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure
- Deficiency Waivers Standard Short Sale/ HAFA II and Deed-in-Lieu of Foreclosure
- Servicer Duties and Responsibilities
- Anti-Fraud in Connection with Standard Short Sales/HAFA II
- Borrower Relocation Incentives
- Acknowledgment of Borrower Response Package
- Evaluation Notices
- Postponement of Foreclosure Proceedings
- Certification Prior to Foreclosure Sale
- Foreclosure Review
- Requesting Fannie Mae's Approval or Notifying of Servicer Approval
- Accounting and Reporting

Effective Date

Servicers are required to implement the requirements in this Announcement for all mortgage loans evaluated for a standard short sale/HAFA II or deed-in-lieu of foreclosure on or after November 1, 2012.

Standard Short Sales/HAFA II

***Servicing Guide*, Part VII, Section 604: Preforeclosure Sales**

There are situations in which none of the servicer's efforts to prevent or cure the delinquency are successful and the use of special relief provisions is not feasible or productive. When all measures short of foreclosure have been considered for a conventional mortgage loan, in compliance with the workout hierarchy as described in the *Servicing Guide* (Part VII, Section 401: Fannie Mae's Workout Hierarchy) and *Servicing Guide* Announcement SVC-2012-07: *Changes to Servicer Response Times and the Preforeclosure Sale Process*, the servicer must consider the use of a short sale. Under the current short sale process, if 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 reduce the loss Fannie Mae would otherwise incur if it acquired the foreclosed property.

This Announcement is revising the requirements regarding when a servicer can consider allowing a borrower to pursue or approve a standard short sale/HAFA II (shortened to "short sale" in this Announcement for ease of reference). The guidelines addressed in this Announcement are subject to all applicable debt collection laws, including the Fair Debt Collection Practices Act, the provisions of the United States Bankruptcy Code, and any applicable state laws. All communications with borrowers must comply with the requirements of applicable laws.

Borrower Eligibility

Servicing Guide, Part VII, Section 604.01: Identifying Potential Candidates

Every borrower being considered for a short sale must submit a complete Borrower Response Package unless the borrower qualifies for Streamlined Documentation (see section below).

ELIGIBLE HARDSHIPS

A borrower must be experiencing one of the eligible hardships listed on the *Uniform Borrower Assistance Form (Form 710)* or the [Hardship Documentation Requirements for Foreclosure Prevention Alternatives](#) exhibit, both of which are available on eFannieMae.com.

A borrower must provide a written explanation of the hardship on the Form 710 for other hardship reasons not already listed on the Form, describing the details of the hardship and providing all relevant documentation to the servicer. The servicer must develop written procedures to review the evidence of hardship and determine when it is appropriate to offer a short sale.

PROPERTY OCCUPANCY

For mortgage loans that are more than 30 days delinquent, the property may be a principal residence, a second home, or an investment property. In addition, the property may be vacant but must not be condemned. For mortgage loans that are less than 31 days delinquent but evaluated as in imminent default (defined below), the mortgage property must be the borrower's principal residence.

DETERMINING REVIEW STANDARD FOR BORROWER ELIGIBILITY

The criteria for short sale eligibility, required borrower documentation, and borrower contributions are affected by the degree of delinquency. The servicer must evaluate the borrower's eligibility and contribution requirements, if any, based on the borrower's delinquency status at that time.

If the servicer receives the purchase offer after the borrower is determined eligible for a short sale, the servicer must review the borrower for a contribution based on the borrower's delinquency status at that point in time. The requirements used to evaluate the borrower for a contribution may be different from those used to determine the borrower's eligibility for a short sale if the borrower's delinquency status has changed.

If the Borrower Response Package is more than 90 days old when a purchase offer is received and the servicer evaluates the borrower for a contribution, the servicer must not request updated documentation from the borrower. However, if the borrower's credit report is more than 90 days old when the servicer conducts the evaluation of the purchase offer and the borrower's contribution, the servicer must obtain a new credit report.

Servicers are reminded that they must follow the evaluation response times for short sale evaluations in accordance with *Servicing Guide* Announcement SVC-2012-07.

Mortgage Loans in Imminent Default

Servicing Guide, Part VII: Delinquency Management and Default Prevention

Currently, Fannie Mae does not allow a servicer to consider a borrower for a short sale when a payment default is reasonably foreseeable (also known as imminent default).

Effective with this Announcement, a borrower who is current or less than 31 days delinquent may be considered for a short sale if he or she meets the imminent default requirements described in this section.

ELIGIBLE HARDSHIPS

The borrower under imminent default must submit a complete Borrower Response Package, including a fully executed Form 710 or equivalent. Servicers may approve a short sale for borrowers who meet the conditions of this Announcement and document one of the following hardships:

- death of a borrower or co-borrower,
- long-term or permanent illness or disability of a borrower or co-borrower or dependent family member,
- divorce or legal separation of a borrower or co-borrower; or
- distant employment transfer/relocation, including a Permanent Change of Station (PCS) order, greater than 50 miles one-way from the borrower's current primary residence to be closer to employment.

If a borrower faces a hardship not listed above and provides all relevant documentation to the servicer for consideration for a short sale, the servicer must review the Borrower Response Package. If the servicer determines that the short sale request is legitimate, it must submit that recommendation to Fannie Mae for written approval of the short sale.

PROPERTY OCCUPANCY

The mortgage property must be the borrower's principal residence.

TOTAL MONTHLY DEBT RATIO

The borrower's total current monthly debt ratio, which is the ratio of the borrower's current monthly qualifying expenses divided by the borrower's current monthly qualifying income, must be greater than 55%.

NOTE: Active duty military service members of the U.S. armed forces with PCS orders relocating from a primary residence purchased on or before June 30, 2012, are exempt from the total monthly debt ratio requirement.

CALCULATING CURRENT MONTHLY EXPENSES

- In order for a servicer to calculate the total monthly debt ratio, the servicer must verify the borrower's current monthly gross expenses. The servicer must calculate the borrower's monthly gross expenses as described below with the following substitutions that reflect the borrower's current expenses (replacing future expenses): The current monthly mortgage payment, including any mortgage insurance premiums, taxes, property insurance, homeowners' (HOA) or condo association fee payments, and assessments related to the property whether or not they are included in the current mortgage payment. If taxes and insurance are not known, the servicer must estimate the borrower's monthly taxes and property insurance payments.
- Monthly payment on an existing home equity line of credit (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% of the balance.

In addition, the servicer must review the credit report for each borrower, or a joint report for a married couple who are co-borrowers, for new credit lines or liens during the term of the hardship. If there are new credit lines or liens, other than for an allowed new mortgage loan (as described below), which cause the borrower's total monthly debt ratio to go above 55%, the servicer must use good business judgment to determine if those expenses are reasonable and should be included in the borrower's gross monthly expenses.

Streamlined Documentation Requirements for Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure

Servicing Guide, Part VII, Section 604: Preforeclosure Sales and Section 606: Deeds-in-Lieu of Foreclosure

Servicers may now approve a borrower for a short sale or for a deed-in lieu of foreclosure without verifying the borrower's hardship or obtaining a complete Borrower Response Package if:

- the borrower is 90 days or more delinquent as of the date of the servicer evaluation, and
- the borrower's credit score is less than 620.

The servicer must use a borrower's classic FICO® credit score which cannot be more than 90 days old as of the date of the servicer evaluation. The classic FICO is produced from software developed by Fair Isaac Corporation and is available from the three major credit repositories. Fannie Mae approves use of the following versions of the classic FICO score:

- Equifax Beacon® 5.0,
- Experian®/Fair Isaac Risk Model V2SM, and
- TransUnion FICO® Risk Score, Classic 04.

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.

New Mortgage Loans Obtained During Hardship

The servicer must review a borrower's credit report for new mortgage loans during the term of the borrower's financial hardship. If, during the term of the hardship, the borrower purchased another primary residence, the servicer can approve the short sale for the subject mortgaged property only if the hardship was due to:

- distant employment transfer,
- new employment, or
- receipt of PCS orders

where the new employment location is more than 50 miles one-way from the subject mortgaged property.

The servicer must verify that the property address securing the new mortgage loan is reasonably located near the borrower's new employment location.

If the borrower has a hardship other than those listed above and has purchased another residence during the term of the hardship, the servicer must submit the short sale request to Fannie Mae for written approval.

Evaluation for Borrower Contribution

Servicing Guide, Part VII, Section 604.02: Contacting Selected Borrowers

With this Announcement, Fannie Mae is clarifying the requirements for a borrower's cash contribution and/or promissory note requests.

The servicer must not request cash contributions and/or promissory notes where applicable law prohibits a borrower contribution or if a borrower:

- qualifies for Streamlined Documentation, or
- is an active duty military servicemember of the U.S. armed forces with PCS orders relocating the servicemember from the subject primary residence purchased by the borrower on or before June 30, 2012.

If a borrower is evaluated for a short sale under the imminent default standard,

- the servicer must evaluate the borrower for the capacity to make a cash contribution only if triggered by the borrower cash contribution test described below.

If the borrower is more than 30 days delinquent,

- the servicer must evaluate the borrower for the capacity to contribute only if triggered by the borrower cash reserve levels or future debt-to-income ratio tests described below.

If the servicer concludes that a borrower who is more than 30 days delinquent has the capacity for either a cash and/or promissory note contribution, the servicer must use the guidance described below for setting an initial request. Servicers may use their judgment in determining which option to use and whether to combine options. The servicer should seek to arrive at a mutually agreeable contribution amount in order to facilitate the short sale. Servicers may be flexible in agreeing to a contribution amount that is less than the initial contribution request, but must provide an explanation in the mortgage loan servicing file of the specific circumstance that limited the borrower's ability to make the requested contribution. The borrower's total cash and promissory note contribution must not exceed the total amount of the deficiency.

BORROWER CASH CONTRIBUTION TEST AND FORMULA

The servicer must evaluate a borrower who is either delinquent or in imminent default for a cash contribution if the borrower's cash reserves, including assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts), as stated on Form 710 are:

- in excess of the greater of \$10,000; or
- six times the contractual monthly mortgage loan payment including principal, interest, and tax and insurance escrows (PITI). (If the servicer does not escrow for taxes and insurance, it must estimate the borrower's monthly tax and insurance premium amounts).

If a borrower has cash reserves of more than \$50,000, the servicer must request written approval from Fannie Mae for the contribution amount.

If the servicer determines that the borrower has the capacity to make a cash contribution, the servicer must initially request a contribution of 20% of the borrower's cash reserves, not to exceed the deficiency.

If a borrower who is greater than 30 days delinquent is either unwilling or unable to contribute 20% of their cash reserves, the servicer may negotiate a lower cash contribution, but must provide an explanation in the mortgage loan servicing file of the specific circumstance that limited the borrower's ability to make a full contribution.

If a borrower is offered a short sale under the imminent default standard and is either unwilling or unable to contribute 20% of their cash reserves, the servicer must request approval from Fannie Mae to accept less than the 20% borrower contribution. However, if the borrower's hardship is death of the primary wage earner, the servicer may negotiate a borrower's cash contribution for less than 20% of the cash reserve, but must provide an explanation in the mortgage loan servicing file of the specific circumstance that limited the borrower's ability to make a contribution.

PROMISSORY NOTE TEST AND FORMULA

The servicer must evaluate a borrower for a promissory note if the borrower's future debt-to-income ratio ("back-end ratio") is less than 55%. The servicer must calculate the borrower's debt-to-income ratio based on

the borrower's future housing expense.

NOTE: *The borrower's future housing expense, if not known, should be estimated at 75% of the borrower's current contractual monthly mortgage loan payment including principal, interest, and tax and insurance escrows. If the servicer does not escrow for taxes and insurance, the servicer must estimate the borrower's monthly tax and insurance escrow payment.*

If an evaluation has been triggered and the servicer determines that the borrower has capacity to make a promissory note contribution, the servicer must initially request a five- or ten-year term promissory note with a monthly payment of no more than one-half of the difference between the borrower's future total monthly debt-to-income ratio and 55%. The resulting promissory note payment should be affordable and result in a future total monthly debt ratio under 55%. The monthly promissory note payment must be rounded to the nearest dollar.

$$\text{Initial Monthly Promissory Note Payment} = \\ (55\% - \text{future total monthly debt ratio})/2 \times \text{Gross Monthly Income}$$

The promissory note balance is the final negotiated monthly promissory note payment multiplied by the negotiated term (60 months or 120 months), not to exceed the deficiency amount.

The promissory note must have a note rate of 0%.

A promissory note is not required if the promissory note balance would be less than \$5,000.

$$\text{Promissory Note Balance} = \text{Monthly Promissory Note Payment} \times \text{Promissory Note Term}$$

Promissory Note Example	
Initial Monthly Promissory Note Payment	$(55\% - 49\%)/2 \times \$4,000 = \120
Promissory Note Balance	$\$120 \times 60 \text{ months} = \$7,200$

If a borrower is either unwilling or unable to agree to a monthly promissory note payment based on the calculation above, the servicer may negotiate a lower amount, but must provide an explanation in the mortgage loan servicing file of the specific circumstance that limited the borrower's ability to make a contribution.

A Promissory Note model template ([Form 190](#)) is available on eFannieMae.com. Use of the Promissory Note model template is optional; however, it reflects the minimum level of information that the servicer must include. A servicer that elects to use the Promissory Note form must revise it as necessary to comply with applicable law.

CALCULATING BORROWER EXPENSES

In order for a servicer to calculate the total monthly debt ratio for purposes of evaluating the borrower for a promissory note contribution, the servicer must determine the borrower's monthly debt and other qualifying fixed expenses, including an actual or estimated future housing payment. The 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, the servicer must consider information concerning monthly obligations obtained from the borrower in writing. Qualifying future expenses equal the sum of the following monthly charges:

- The actual future housing payment if known, or 75% of the current monthly mortgage payment, including any mortgage insurance premiums, taxes, property insurance, HOA or condo association fee payments, and assessments related to the property (whether or not they are included in the current mortgage payment). If taxes and insurance premiums are not known, the servicer must estimate the borrower's monthly taxes and property insurance payments.
- Monthly payments on all closed-end subordinate mortgages if applicable. However, the servicer must exclude the subordinate lien payments for the subject property.

- 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% 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%.
- Monthly payment on a HELOC for the borrower's second home or investment property, if applicable, 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% of the balance. However, the servicer must exclude the monthly HELOC payment if the HELOC is a lien against the subject property.
- 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 other than the subject mortgaged property.
- Monthly mortgage payment for a second home (PITI and, when applicable, mortgage insurance, leasehold payments, HOA dues, condo unit or co-op unit maintenance fees (excluding unit utility charges). However, if the servicer must exclude the monthly mortgage payment if the second home is the subject property.

In addition, the servicer must review the credit report for each borrower, or a joint report for a married couple who are co-borrowers, for new credit lines or liens obtained during the term of the hardship. If there are new credit lines or liens, other than for an allowed new mortgage loan (as described below), which cause the borrower's total monthly debt ratio to go above 55%, the servicer must use good business judgment to determine if those expenses are reasonable and should be included in the qualifying expenses.

CALCULATING BORROWER INCOME

In order for the servicer to calculate the total monthly debt ratio, the servicer must determine the borrower's "monthly gross income" based on income documentation provided by the borrower before any payroll deductions including:

- wages and salaries, overtime pay, commissions, fees, tips, bonuses, housing allowances, or 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);
- monthly income from annuities, insurance policies, retirement funds, or pensions;
- disability or death benefits;
- positive net rental income; and
- other income such as adoption assistance.

NOTE: *If the subject property is an investment property, the servicer must exclude all investment property related income from the borrower's total monthly income.*

The servicer may not consider unemployment insurance benefits or any other temporary sources of income related to unemployment, such as severance payments, as part of the monthly gross income for mortgage loans being evaluated for a short sale.

For the purposes of determining monthly gross income when non-taxable income is used and the income and its tax-exempt status are likely to continue, the servicer must calculate an "adjusted gross income" for the borrower by adding an amount equivalent to 25% of the nontaxable income to the borrower's income.

If the servicer can determine that the actual amount of federal and state taxes is more than 25% of the borrower's non-taxable income, the servicer may use that amount to develop the adjusted gross income.

Determining the Market Value of the Property

Servicing Guide, Part VII, Section 604.03: Determining the Market Value of the Property

If the servicer has evaluated or considered the borrower for all foreclosure prevention alternatives in accordance with Fannie Mae's workout hierarchy and has reason to believe that the borrower meets the general eligibility guidelines for a short sale, the servicer must obtain a property valuation if the borrower:

- expresses an interest in a short sale,
- has already listed the property for sale, or
- notifies the servicer of a purchase offer on the property.

The servicer must order the property valuation as soon as any one of these conditions is met. The servicer's evaluation of a borrower's contribution should not delay the ordering of a property valuation.

Fannie Mae requires that the property valuation for a short sale be based on an interior and exterior inspection of the property which can be either a broker price opinion (BPO) or, if licensing requirements in the state dictate use of an appraisal for these purposes, an appraisal (performed in accordance with the Uniform Standards of Professional Appraisal Practice(USPAP). The property valuation must be dated or have been refreshed by Fannie Mae within 90 calendar days of the short sale approval.

Fannie Mae has established a network of vendors that all servicers must use for obtaining property valuations. The list of vendors can be found in the [Preforeclosure Valuation Provider Information](#) document on eFannieMae.com. The effective date on which each vendor is authorized to receive referrals for mortgage loans owned or securitized by Fannie Mae is noted on this document. The property valuation utilized must be obtained from a vendor within Fannie Mae's approved network in connection with the evaluation of a short sale.

Evaluating Short Sale Offers

The property valuation is the basis for the determining the minimum net required (MNR) proceeds and list price guidance from Fannie Mae. The servicer can only approve a short sale if proceeds from the short sale meet or exceed the MNR. The servicer must document Fannie Mae's MNR in the mortgage loan servicing file. The MNR must be kept confidential and must not be shared with interested parties to the transaction (for example, the buyer, seller, or real estate agents).

The allowable transaction costs (as described below), the actual subordinate lien payments, and Fannie Mae's actual relocation assistance must be deducted from the short sale purchase offer to determine if the offer results meet or exceed the MNR.

Net Proceeds Example	
Short Sale Purchase Offer	\$ 100,000
<i>Minus</i> Acceptable Short Sale Transaction Costs	- \$ 9,000
<i>Minus</i> Subordinate-Lien Payments	- \$ 6,000
<i>Minus</i> Fannie Mae Relocation Incentive	- \$ 3,000
Value to Compare to Fannie Mae's MNR	\$ 82,000

In addition, the short sale must close within 60 days of the servicer's approval. The servicer must request written approval from Fannie Mae to extend these timeframes.

An offer at or above Fannie Mae's list price may not automatically result in net proceeds that meet or exceed the MNR if the transaction costs are excessive. If the servicer believes that the transaction costs are excessive or if the offer does not result in an acceptable MNR but the servicer would still recommend the transaction, Fannie Mae's written approval must be obtained.

Providing Property List Price Guidance

Fannie Mae will now provide the servicer with list price guidance as well as a "good-through" date for the guidance. Servicers will have access to these values through eFannieMae.com. Servicers should provide the written (including email) list price guidance to the borrower and/or the borrower's real estate broker with the following information:

- the suggested list price is provided only as guidance, and not as the required list price (the borrower and/or the borrower's real estate broker are responsible for determining the list price);
- an offer at or above Fannie Mae's suggested list price may not automatically result in an acceptable offer if the transaction costs are excessive; and
- a list of acceptable and unacceptable short sale transaction costs.

All communication must be documented in the mortgage loan servicing file. As noted above, the servicer must not provide the MNR to any interested parties to the transaction (for example, the buyer, seller, or real estate agents).

Acceptable Short Sale Transaction Costs

The servicer must specify in the list price guidance communication the types of transaction costs that may be deducted from the contract sales price. Allowable transaction costs typically include:

- real estate sales commission customary for the market, which must not exceed 6% of the sales price of the property;
- real estate taxes and other assessments prorated to the date of closing;
- typical and customary local and state transfer taxes and stamps;
- title and settlement charges typically paid by the seller;
- seller's attorney fees for settlement services typically provided by a title or escrow company;
- wood-destroying pest inspections and treatment, when required by local law or custom;
- HOA fees that are past due, if applicable;

- buyer closing costs typically paid by the seller that must be usual and customary for the local market.

Allowable transaction costs also include any amounts authorized by Fannie Mae.

NOTE: *Closing of short 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% of the sales price of the property in aggregate*

Unacceptable Short Sale Transaction Costs

Fannie Mae does not allow the following transaction costs:

- fees paid to a third party to negotiate a short sale with the servicer (commonly referred to as “short sale negotiation fees” or “short sale processing fees”) must not be deducted from the sales proceeds or charged to the borrower. Additionally, the servicer, its agents, or any outsourcing firm it employs must not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with any Fannie Mae loan;
- real estate sales commission paid to the borrower or the purchaser; or
- buyer’s discount points or mortgage loan origination costs.

Mortgage Insurer Approval for Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure

Servicing Guide, Part VII, Section 604.04: Discussing the Sale With the Mortgage Insurer and Section 606: Deeds-in-Lieu of Foreclosure

As a reminder, Fannie Mae has obtained delegations of authority so that servicers can more efficiently process short sale requests without the need to obtain mortgage insurer approval on individual mortgage loans. A list of these mortgage insurers is posted on eFannieMae.com.

For mortgage insurers not on this list, servicers must continue to obtain their approval on a case-by-case basis. The servicer must not agree to a short sale or deed-in-lieu of foreclosure unless that mortgage insurer agrees in writing to:

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

Servicers must comply with all obligations related to the submission of mortgage insurance claims.

Allowable Subordinate-Lien Payments for Standard Short Sale/HAFA II and Deed-in-Lieu of Foreclosure

Servicing Guide, Part VII, Section 604: Preforeclosure Sales and Section 606: Deeds-in-Lieu of Foreclosure

Fannie Mae is requiring any payments to subordinate lienholders to be paid  on the sales proceeds at closing for either a short sale or deed-in-lieu of foreclosure, in exchange for a lien release and full release of liability for the borrower. Allowable payments from the sales proceeds to all subordinate lienholders to facilitate lien releases must not exceed \$6,000 in aggregate.

The servicer may offer the maximum payment of \$6,000 for subordinate lien amounts of \$6,000 or greater in order to facilitate the transaction. If there are multiple subordinate lienholders, the servicer has discretion to divide the subordinate lien payment among subordinate lienholders so as to maximize the chances that all subordinate lienholders will release their liens. The servicer must not authorize the settlement agent to pay more than an aggregate of \$6,000 of sale proceeds as payment(s) to subordinate mortgage lienholders. If an individual subordinate lien, or total subordinate liens are less than \$6,000, the payoff can only be up to the subordinate lien amount owed. No exceptions will be made to the \$6,000 aggregate cap.

Prior to releasing any funds to a subordinate mortgage or lienholder, the servicer must obtain written commitment from the subordinate lienholder that it will release the borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed-upon payoff amount. The servicer must require the closing attorney or agent to either confirm that they are in receipt of this commitment from subordinate lienholders or request that a copy of the written commitment provided by the subordinate lienholder be sent to the servicer with the HUD-1 Settlement Statement which is provided in advance of the closing.

Subordinate mortgage or lienholder(s) may not require contributions from either the real estate agent(s) or borrower as a condition for releasing its lien and releasing the borrower from personal liability.

Deficiency Waiver for Standard Short Sale/HAFI II and Deed-in-Lieu of Foreclosure

Servicing Guide, Part VII, Section 604: Preforeclosure Sales and Section 606: Deeds-in-Lieu of Foreclosure

For insured mortgages with delegations of authority or uninsured mortgages, Fannie Mae is directing the servicer to release the borrower from liability for any deficiency associated with the Fannie Mae mortgage upon successful completion of a short sale or deed-in-lieu of foreclosure. The servicer must inform the borrower that any deficiency will be waived in the letter to the borrower approving the short sale or deed-in-lieu of foreclosure, and provide a deficiency waiver at the closing.

A sample *Deficiency Waiver Agreement* ([Form 189](#)) is available on eFannieMae.com. Use of the sample Deficiency Waiver Agreement is optional; however, it reflects the minimum level of information that the servicer must include in the required deficiency waiver that the servicer must provide at closing. A servicer that elects to use the sample Deficiency Waiver Agreement must revise it as necessary to comply with applicable law.

As a reminder, 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").

Servicer Duties and Responsibilities

The short sale process requires that the servicer actively oversee the sale of the mortgaged property by communicating with and providing instruction to the listing agent. At a minimum, the servicer's duties and responsibilities are as follows:

- review each sales contract in detail to verify that the contract sales price and terms comply with this Announcement;
- review the HUD-1 Settlement Statement prior to the short sale for proper transfer of title;
- work with the title company to resolve any issues that may delay the closing including assisting in subordinate lien releases;
- provide instructions to the title company regarding closing of the transaction in compliance with this Announcement;

- ensure that the borrower has waived reimbursement of any escrow, buydown funds or prepaid items and assigned any insurance proceeds to Fannie Mae, if applicable; and
- ensure the sales proceeds are received on a timely basis.

Servicers must also comply with any other specific written directions that Fannie Mae may provide.

Anti-Fraud in Connection with Standard Short Sale/HAFA II

A servicer must not approve a borrower for a short sale if there is evidence of fraud or misrepresentation in the transaction. The borrower, purchaser, and all parties involved in the transaction must sign and date a *Short Sale Affidavit (Form 191)* at the time of the closing confirming that the transaction is an arm's-length transaction with all proceeds (net of allowable transaction costs as described above) applied to the mortgage loan payoff in full satisfaction of the entire first-lien mortgage debt. An arm's-length transaction is a transaction between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise. The servicer may allow the borrower, purchaser, and all parties involved to sign individually on separate copies of the short sale affidavit. In addition, the servicer must retain the original signed short sale affidavit(s) in the mortgage loan servicing file.

In the event the closing agent to the sale is prohibited from signing the affidavit by applicable local, state, or federal law, the servicer may waive the closing agent's signature requirement upon request by the closing agent. The servicer must condition the waiver upon the closing agent's agreement that it will not also act as the closing agent on a subsequent transaction involving the subject property within one year of the closing of the short sale transaction. In all other circumstances, signatures from all involved parties are required as a condition of Fannie Mae's agreement to accept a short sale of the mortgage property.

In addition, for all short sale the following conditions must be met:

- Neither the borrower nor purchaser will receive any funds or commissions from the sale of the subject mortgage property. The borrower may receive a relocation incentive payment if it is offered by Fannie Mae or another acceptable source (see Borrower Relocation Incentives section). Any relocation incentive payment received by the borrower from Fannie Mae must be reflected on the HUD-1 Settlement Statement.
- Fees paid to a third party to negotiate a short sale with the servicer (commonly referred to as "short sale negotiation fees" or "short sale processing fees") must not be deducted from the sales proceeds or charged to the borrower. Additionally, the servicer, its agents, or any outsourcing firm it employs must not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with any Fannie Mae loan.
- The purchaser cannot resell the property within 30 days of the short sale settlement date.
- The purchaser cannot resell the property for greater than 120% of the short sale price within 90 days of the short sale settlement date.

The deed conveying the property to the purchaser should be amended, in compliance with applicable state law, to include the following provision:

"Grantee herein is prohibited from conveying captioned property for any sales price for a period of 30 days from the date of this deed. After this 30 day period, Grantee is further prohibited from conveying the property for a sales price greater than \$ [insert value equal to 120% of short sale price] until 90 days from the date of this deed. These restrictions shall run with the land and are not personal to the Grantee."

NOTE: *If the servicer believes that the resale restriction is not appropriate for a particular short sale, then the servicer must submit the mortgage loan with an explanation to Fannie Mae for written approval prior to instructing the settlement agent to insert the above-referenced deed provision.*

In addition, within 48 hours of the closing, the servicer must review the HUD-1 Settlement Statement to validate compliance with this Announcement and for accuracy including:

- the purchaser and sales price match the short sale purchase contract;
- the HUD-1 Settlement Statement is consistent with the closing instructions, particularly ineligible transfer of title to related parties; and
- the deed has been recorded in the name of the buyer.

Borrower Relocation Incentives

The borrower is entitled to an incentive payment of \$3,000 from Fannie Mae to assist with relocation expenses following successful completion of a short sale unless:

- the borrower is required to contribute funds or execute a promissory note;
- the borrower has PCS orders and receives a Dislocation Allowance (DLA) or other government relocation assistance; or
- the servicer has knowledge that the borrower is receiving relocation assistance from another source other than the servicer.

In instances where government relocation assistance is not provided to a borrower with PCS orders, the servicer must obtain Fannie Mae's prior written approval to provide relocation assistance.

If the servicer has knowledge that a borrower is receiving transition or relocation assistance from another source (for example, an employer, State Housing Finance Agency, etc.), that amount must be subtracted from Fannie Mae's short sale relocation assistance and Fannie Mae's relocation incentive will be reduced dollar for dollar up to Fannie Mae's relocation incentive cap of \$3,000. The total relocation assistance the borrower receives may exceed \$3,000 if the servicer elects to provide additional assistance from its own funds or if the borrower receives assistance from another source.

The servicer must instruct the settlement agent to pay the borrower the Fannie Mae relocation incentive at closing from the sale proceeds at the same time that all other payments are disbursed, including the payoff to the servicer. The servicer must not pay transition or relocation assistance from any other source from the sale proceeds.

The servicer may not require the borrower to apply the borrower incentive payment to obtain the release of other liens or non-real estate title impediments.

Acknowledgment of Borrower Response Package

Servicing Guide, Part VII, Section 205.06: Acknowledgement of Borrower Response Package

Fannie Mae requires that the servicer must acknowledge to the borrower either verbally or in writing the receipt of a Borrower Response Package within three business days of receipt. The acknowledgment must include an explanation that the foreclosure process may continue during the evaluation but that a foreclosure referral will not occur if the servicer is reviewing a complete Borrower Response Package or has extended an offer and the borrower's response time for acceptance has not expired.

Servicers must now include an explanation that the foreclosure process may continue during the evaluation and that foreclosure referral will not occur if the servicer is reviewing a complete Borrower Response Package or if the servicer extends an offer for a home retention alternative and the borrower's response time for acceptance has not expired. However, if the servicer determines the borrower is eligible for a liquidation alternative the foreclosure process including foreclosure referral will continue.

Evaluation Notices

Servicing Guide, Part VII, Section 205.08: Evaluation Notices

With this Announcement, Fannie Mae is replacing the single evaluation model clause with two new evaluation model clauses for the short sale.

- If a borrower is offered a short sale prior to the scheduling of the foreclosure sale date the servicer should use model clause titled *Standard Short Sale*.
- If a borrower is offered a short sale after foreclosure sale date is scheduled the servicer should use model clause titled *Standard Short Sale – Foreclosure Sale Date Scheduled*.

[Evaluation model clauses](#) are available on eFannieMae.com. Use of the model clauses is optional; however, the model clauses reflect a minimum level of information that the servicer must communicate and illustrate a level of specificity that complies with the requirements of the *Servicing Guide*. A servicer that elects to use the model clauses must revise its letter as necessary to comply with applicable law.

Postponement of Foreclosure Proceedings

Servicing Guide, Part VIII, Section 107.01: Servicer-Initiated Temporary Suspension of Proceedings; Section 107.01.01: Borrower Response Package Received Within 30 Days of Post Referral to Foreclosure Solicitation Letter; Section 107.01.02: Borrower Response Package Received After 30-Day Response Period But Before 37 Days Prior to the Foreclosure Sale Date; Section 107.01.03: Borrower Response Package Received After 30-Day Response Period But Within Days 15–37 Prior to the Foreclosure Sale Date; and Section 107.01.04: Borrower Response Package Received Less Than 15 Days Prior to the Foreclosure Sale Date

Fannie Mae currently requires that if a servicer makes an offer for a foreclosure prevention alternative when a mortgage loan that is equal to or less than 12 months delinquent to the borrower in:

- Judicial Jurisdictions — the servicer must continue to delay the Motion for Judgment (or equivalent action although defined differently in various jurisdictions) for up to 14 days for the borrower to respond.
- Nonjudicial Jurisdictions — the servicer must delay the next legal action for up to 14 days for the borrower to respond.

Fannie Mae is changing the requirements for when a Fannie Mae liquidation alternative (short sale or deed-in-lieu of foreclosure), excluding Fannie Mae HAFA, is communicated to a borrower. The requirement to continue the foreclosure process during the borrower response period and the servicer must not delay the foreclosure process 14 days for the borrower to respond. The servicer should continue to delay the foreclosure process for 14 days for the borrower to respond if a retention offer is extended to the borrower.

The Borrower Response Package must be complete before any legal action may be postponed, except if an offer for a short sale has been made based upon Streamlined Documentation.

Postponement of a foreclosure sale for a mortgage loan delinquent greater than 12 months as measured by the LPI date will continue to require prior written approval by Fannie Mae.

BORROWER RESPONSE PACKAGE RECEIVED WITHOUT A SHORT SALE OFFER

When the servicer receives a complete Borrower Response Package without a short sale offer, the servicer must follow the requirements in the *Servicing Guide* to determine if the foreclosure process should be suspended. When required, the servicer must evaluate the borrower for all foreclosure prevention alternatives following the Fannie Mae workout hierarchy.

BORROWER RESPONSE PACKAGE RECEIVED WITH A SHORT SALE OFFER

When the servicer receives a Borrower Response Package with a short sale offer, the servicer must determine if the foreclosure process should be suspended based upon the criteria outlined below.

- Borrower Response Package and short sale offers received more than 75 days prior to the foreclosure sale date: The servicer must follow requirements in the Servicing Guide (Part VIII, Section 107.01) to determine if the foreclosure process should be suspended. When required, the servicer must evaluate the borrower for all foreclosure prevention alternatives following the Fannie Mae workout hierarchy.
- Borrower Response Package and short sale offers received within 75 to 37 days prior to the foreclosure sale date: The servicer must attempt to conduct a review in accordance with *Servicing Guide* Announcement SVC-2012-07. If the servicer cannot do so, it must conduct an expedited review of the Borrower Response Package and short sale offer purchase prior to the foreclosure certification date.
- Borrower Response Package and short sale offers received within 36 to 15 days prior to the foreclosure sale date: The servicer must conduct an expedited review of the Borrower Response Package and short sale purchase offer prior to the foreclosure certification date.
- Borrower Response Package and short sale offers received less than 15 days prior to the foreclosure sale date: The servicer is strongly encouraged, but not required, to conduct an expedited review of the Borrower Response Package and preforeclosure offer.

If the servicer approves a short sale purchase offer with a complete Borrower Response Package (or other acceptable documentation under the Streamlined Documentation Requirements), it must suspend the foreclosure sale to allow the short sale to close as permitted under state or local law.

Certification Prior to Foreclosure Sale

***Servicing Guide*, Part VIII, Section 107.03.01: Certification Prior to Foreclosure Sale**

At least 7 days but no later than 15 days prior to the foreclosure sale, the servicer must complete an account review. If the account review confirms that:

- all delinquency management requirements have been achieved, and
- there is not an approved payment arrangement, a retention offer pending or accepted, or an approved purchase offer for a short sale is scheduled to close,

the servicer must send written certification to the attorney (or trustee) indicating that the attorney (or trustee) must continue with the foreclosure sale. This written certification must be sent to the attorney (or trustee) at least 7 days but no greater than 15 days prior to the foreclosure sale date.

The servicer must not issue a certification to the foreclosure attorney (or trustee) if:

- a Borrower Response Package was received and an offer for a payment arrangement or retention alternative was made on or before the 7th day prior to the foreclosure sale,
- an approved purchase offer for a short sale is scheduled to close, or
- the servicer exercised its discretion to postpone the foreclosure sale to facilitate resolution of an escalated case.

In these situations, the servicer must not provide the certification and must make every effort to stop a scheduled foreclosure sale.

Foreclosure Review

Servicing Guide, Part VIII, Section 106: Referral to Foreclosure Attorney/Trustee

The servicer must perform a pre-referral to foreclosure review of the mortgage loan at least seven days prior to the date the servicer is required to refer the mortgage loan to foreclosure. Before the review, the breach letter must have expired, and the Borrower Solicitation Package deadline must also have expired without affirmative response from the borrower.

With this Announcement, Fannie Mae is removing the requirement to delay a foreclosure for the 14-day response period for liquidation alternatives (short sale or a deed-in-lieu of foreclosure), excluding Fannie Mae HAFA. The delay should not be factored into the servicer's pre-referral foreclosure review. Servicers must continue to ensure during the pre-referral foreclosure review that the response time frame has expired for a borrower offered a retention alternative, such as a modification.

Requesting Fannie Mae's Approval or Notifying of Servicer Approval

Servicing Guide, Part VII, Section 604.05: Requesting Fannie Mae's Approval

When the servicer approves a short sale based on the requirements in this Announcement, it must report the completion of the short sale to Fannie Mae through the HomeSaver Solutions® Network (HSSN) within 24 hours.

When Fannie Mae is required to approve a short sale, the servicer must continue to provide Fannie Mae, within 24 hours of the offer, as much information as possible to enable Fannie Mae to perform its analyses. 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 property valuation), the specifics about the purchase offer, and the servicer's recommendation to Fannie Mae through HSSN. 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.

Accounting and Reporting

Servicing Guide, Part VII, Section 604.07: Accounting and Reporting

Once the servicer receives the final signed HUD-1 Settlement Statement, the net sale proceeds, any cash contributions, and the executed promissory note (if applicable), it must report the completion of the short sale to Fannie Mae through HSSN. The sale proceeds (and any cash contributions) must be remitted through the Cash Remittance System with a remittance code of 310.

The servicer must report the short sale in the first delinquency status information it transmits to Fannie Mae after the servicer or Fannie Mae approves the sale. For most mortgage loans, the servicer must code the short sale as a "Third-Party Sale" (Action Code 71) in the first monthly Loan Activity Report that it transmits following the short sale.



Servicers should contact their Servicing Consultant, Portfolio Manager, Investor Reporting Business Analyst, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Announcement.

Gwen Muse-Evans
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