

# Multifamily Seller/Servicer Guide

## Chapter 27

### Commitment or Early-Rate Lock Application

#### **Chapter 27 Commitment or early rate-lock application (10/12/17)**

This chapter sets forth the provisions that the Seller must include in any application with the Borrower or any commitment to the Borrower (both referred to in this chapter as the “Seller’s Application”) with regard to a Mortgage to be purchased by Freddie Mac under the Multifamily Conventional Cash Mortgage Purchase Program, under the SBL Purchase Product, or under the Targeted Affordable Housing Cash Mortgage Purchase Program.

This chapter also details the contractual requirements that are automatically incorporated into any Letter of Commitment issued by Freddie Mac to a Seller, or for Products that permit an early rate-lock application, the contractual requirements that are automatically incorporated into any early rate-lock application submitted to Freddie Mac by a Seller. Note: the SBL Product does not permit use of the early rate-lock application or delivery path.

#### **27.1 Authorization to publicly use transactional information (10/05/07)**

The Seller’s Application must include the following authorization by the Borrower:

“The Borrower understands that [Name of Seller] intends to sell the mortgage loan for which Borrower is applying (the “Mortgage”) to Freddie Mac. If Freddie Mac purchases the Mortgage, the Borrower’s signature below constitutes the Borrower’s authorization for Freddie Mac to publicly use, at Freddie Mac’s discretion, the name of the Property, photographs of the Property, and basic transaction information (for example, the number of units in the Property, the loan amount, etc.) relating to the Mortgage.”

#### **27.2 Breakage provision for early rate-lock applications (10/12/17)**

The Seller’s Application for a Mortgage to be purchased by Freddie Mac under its early rate-lock application delivery option must include the “breakage provision” which is set forth both in Exhibit 3 and on FreddieMac.com (or another breakage provision approved in writing by Freddie Mac).

If any part of the breakage provision is not enforceable under the laws of the applicable jurisdiction, the Seller must promptly notify Freddie Mac in writing of such unenforceability and recommend alternate language that will be enforceable under applicable law.

#### **27.3 General terms applicable to an early rate-lock application or a commitment (02/28/19)**

The following terms are incorporated into each Freddie Mac early rate-lock application and Letter of Commitment:

**a. No assignment (10/05/07)**

The Seller will not have the right to assign or otherwise transfer the early rate-lock application, any mandatory delivery Purchase Contract resulting from the early rate-lock application or any commitment without the prior written consent of Freddie Mac, which consent may be granted or withheld in Freddie Mac's sole discretion.

**b. Warranties (10/05/07)**

For purposes of the General Warranties set forth in the Guide that the Seller is deemed to make as of the Freddie Mac Funding Date, the Seller will be deemed to make the following warranty with regard to any additional documents required to be executed by the Borrower and attached to the early rate-lock application or commitment.

“The Seller has used the form of each additional document attached to the early rate-lock application or commitment and has not made any changes to the text of the additional document except those changes required by or permitted in writing by Freddie Mac.”

**c. Assignment of additional documents (10/05/07)**

At final delivery, the Seller must include an assignment to Freddie Mac of any and all of its right, title and interest in each additional document.

**d. Remedies (10/05/07)**

If the Seller breaches any provisions or conditions of the early rate-lock application or commitment, in addition to any rights and remedies specified in the early rate-lock application or commitment, Freddie Mac will have all rights and remedies specified in the Guide.

**e. Guide (10/05/07)**

If any provisions set forth in the early rate-lock application or commitment are inconsistent with any provisions set forth in the Guide, the provisions of the early rate-lock application or commitment will govern. If the early rate-lock application or commitment is silent with respect to any subject covered by provisions set forth in the Guide, the provisions in the Guide will govern.

**f. Exclusivity (10/05/07)**

The terms and provisions of the early rate-lock application or commitment are intended for the sole and exclusive benefit of Freddie Mac and the Seller and are not for the benefit of any other party, including the Borrower. Each condition to Freddie Mac's obligation to purchase the Mortgage is for the exclusive benefit of Freddie Mac and may be waived in writing by Freddie Mac in whole or in part in Freddie Mac's discretion.

**g. Modifications (10/05/07)**

The provisions of the early rate-lock application or commitment may not be modified or in any way changed by implication or subsequent conduct, correspondence or otherwise, unless such waiver, modification or change is expressly stated as such and is specifically agreed to in writing by Freddie Mac and the Seller.

**h. Merger (10/05/07)**

No statements, agreements or representations, oral or written, which may have been made to the Seller or to any employee or agent of the Seller, by any employee, representative or agent acting on Freddie Mac's behalf, with respect to the Mortgage or otherwise, will be of any force or effect except to the extent stated in the early rate-lock application or commitment, and all prior agreements and representations made with respect to the Mortgage are merged in the early rate-lock application or commitment.

**i. Faxed copies and originals (10/05/07)**

Copies of the early rate-lock application or commitment with faxed signature pages will be binding and effective as to each party and may be used in lieu of an original early rate-lock application or commitment and in lieu of an original signature.

**j. Survival (10/05/07)**

The provisions and conditions of the early rate-lock application or commitment will survive final delivery of the Mortgage.

**k. "Lender's" consent/"Lender's" requirements (10/07/08)**

Certain provisions of the early rate-lock application or commitment may refer to matters which must be "acceptable to Lender" or "approved by Lender" or "submitted to Lender for its review and approval," or comply with "all requirements of Lender" or words of similar meaning. The Seller acknowledges that as between the Seller and Freddie Mac and as a condition to Freddie Mac's obligation to purchase the Mortgage, all such matters must be acceptable to or approved by Freddie Mac, in Freddie Mac's discretion, prior to the Origination Date, and Lender's requirements shall be all Freddie Mac's requirements.

**l. Governing Law (10/05/07)**

The early rate-lock application or commitment will be governed by the laws of the Commonwealth of Virginia.

**m. Form of documents (10/12/17)**

The Seller must originate the Mortgage using the applicable Freddie Mac Multifamily Loan Documents available on FreddieMac.com.

- For non-SBL Mortgages, the Seller may use any version of the Multifamily Loan Documents that have been included on the Currently Acceptable Multifamily Loan Documents list on FreddieMac.com during the period between the date of the

commitment and the Origination Date, or the date that the Seller executed the early rate-lock application and the Origination Date.

- For SBL Mortgages, the Seller may use any version of the Multifamily Loan Documents that have been included on the Currently Acceptable Multifamily Loan Documents-SBL list on FreddieMac.com during the period between the date of the commitment and the Origination Date.

**n. Incorporation of exhibits (10/05/07)**

Any exhibits attached to the early rate-lock application or commitment are incorporated into the early rate-lock application or commitment.

**o. Securitization disclosure (06/29/17)**

The Seller/Servicer acknowledges, as originator the Mortgage, that if it contributes 20 percent or more of the Mortgages in a Securitization, or if the Seller/Servicer will service 20 percent or more of the Mortgages in a Securitization, then, at the request of Freddie Mac, the Seller/Servicer will provide all the following items in a form customary and consistent with then-current market practices:

1. Information to be included in the Securitization offering documents with respect to the Seller/Servicer in its capacity as originator of the Mortgages and, if applicable, in its capacity as primary servicer or sub-servicer of the Mortgages in the Securitization, including a description of the sub-servicing agreement (“Seller/Servicer’s Disclosure Information”).
2. An indemnification in form and substance satisfactory to Freddie Mac with respect to the Seller/Servicer’s Disclosure Information for the benefit of Freddie Mac, Issuer Person, Issuer Group and Underwriter Group for the applicable Securitization. Issue Person, Issuer Group and Underwriting Group will have the meanings given to them in the Loan Agreement.
3. A letter of counsel (often referred to as a 10b-5 Negative Assurances Letter) addressing whether the Seller/Servicer’s Disclosure Information contains an untrue statement of any material fact or the Seller/Servicer’s Disclosure Information omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading or other such language acceptable to Freddie Mac.

If the Seller/Servicer, as originator of the Mortgage, contributes less than 20 percent of the Mortgages to a Securitization or if the Seller/Servicer will service less than 20 percent of the Mortgages in a Securitization, then the Seller/Servicer’s Disclosure Information, indemnification and letter of counsel, as applicable, may not be required.

## **27.4 Explanation of terms and additional requirements (06/25/20)**

The following explanation of terms and additional requirements are incorporated into each Freddie Mac early rate-lock application and Letter of Commitment:

**a. SPE**

If the Borrower is required to be a Single Purpose Entity, it must meet the requirements set forth in the Loan Agreement.

b. **Single member LLC**

If the Borrower is a single member limited liability company, it must be formed in Delaware if the Mortgage is \$15,000,000 or more.

c. **SPE Equity Owner**

If Borrower is required to have an SPE Equity Owner, the SPE Equity Owner must be a single member limited liability company formed in Delaware or a corporation.

d. **Maximum Mortgage amount**

The maximum Mortgage amount will be based on a maximum Benchmark US Treasury Security set forth in the commitment or early rate-lock application. The actual Mortgage amount will be calculated at Interest Rate Lock and will be rounded down to the nearest \$1,000 increment.

e. **Floating interest rate Mortgage**

For a floating rate Mortgage, the interest rate for an adjustment period will equal the Index Rate for the interest adjustment period plus the margin. The margin will remain fixed during the term of the Mortgage.

f. **Defeasance Mortgage and yield maintenance period**

For a Mortgage which prohibits prepaying the Mortgage but allows the Borrower to defease the Mortgage, the yield maintenance period set forth in the commitment or early rate-lock application will be applicable only until the date of Securitization if securitized within one year after the Origination Date.

g. **Replacement Reserve**

The Loan Agreement must include (1) the “Rider to Multifamily Loan and Security Agreement – Replacement Reserve Fund - Deferred Deposits” if the monthly deposits to the replacement reserve fund are deferred or (2) the “Rider to Multifamily Loan and Security Agreement – Replacement Reserve Fund - Monthly Deposit Cap” if the monthly deposits to the replacement reserve fund are capped.

h. **Repairs and Repair Reserve**

The Loan Agreement must include (1) the “Rider to Multifamily Loan and Security Agreement – Repair Reserve Fund” if a deposit will be collected for the Priority Repairs or (2) the “Rider to Multifamily Loan and Security Agreement – Repairs - No Repair Reserve Established” if a deposit will not be collected for the Priority Repairs.

i. **Operational repairs**

If there are Operational Repairs, the Seller/Serviceicer must deliver the Repair Letter to the Borrower on or before the Origination Date.

j. **Earthquake insurance**

Notwithstanding that the commitment or early rate lock application does not require earthquake insurance, the Seller/Servicer may not modify any provision of the Loan Agreement provisions regarding earthquake insurance.

**k. O&M Programs**

Each O&M Program required by the commitment or early rate lock application must comply with all requirements set forth in the environmental report prepared for the Mortgage and with all requirements in the Guide.

- Each O&M Program, signed by the Borrower and reflecting that it is the O&M Program for the Property, must be submitted as part of the final delivery package.
- Unless otherwise set forth in the commitment or early rate lock application, each O&M Program must provide that it will be implemented within no more than 60 days after the origination date of the Mortgage.
- If Borrower previously established an O&M Program that was approved in connection with a Senior Mortgage then in lieu of delivering the O&M Program in the final delivery package, Borrower must certify that the O&M Program (i) is the program previously reviewed and approved and (ii) remains in effect.

**l. Interest rate cap**

If a third-party interest rate cap is required then the cap provider, agreement and term must be acceptable to Freddie Mac. Cap payments must be made to a trust account of Seller as Servicer for Freddie Mac unless Freddie Mac directs otherwise.

**m. LTV at Origination**

The LTV at Origination may be adjusted at rate-lock if the actual Mortgage amount differs from the maximum Mortgage amount. The Seller/Servicer must complete the “Maximum Combined LTV” in Article XII of the Loan Agreement with the lesser of (i) 80%, or (ii) the LTV at Origination rounded up to the nearest percentage evenly divisible by 5. For example, if the LTV at Origination is 71%, the “Maximum Combined LTV” would be 75%. If the LTV at Origination is 76%, the “Maximum Combined LTV” would be 80%.

**n. Modifications to Loan Documents**

In addition to all other modifications required by the commitment or early rate-lock application, Freddie Mac will permit the modifications to the Loan Documents set forth in Exhibit E of the commitment or early rate-lock application, if any. Please note that for future mortgages involving the same Borrower Principal, the pricing for such future mortgages with the same or similar modifications may be increased as a result of such modifications. In addition, some or all of such modifications may no longer be available under Freddie Mac’s then-applicable policies or requirements.

**o. Current property financial statements**

At origination of the Mortgage the Borrower must provide a current property financial statement, presented in a month-to-month format.

- i. For any Mortgage originated from the first of the month up to and including the 15th of the month, the property financial statement must cover the Property’s performance between the date of the last certified property financial statement included in the full underwriting package and the end of the month two months prior to the month in which the Mortgage was originated. For example, if the Mortgage is originated on April 14, then the income and expense statement must cover the period of time through February 28.
  - ii. For any Mortgage originated from the 16th of the month or later, the property financial statement must cover the Property’s performance between the date of the last certified property financial statement included in the full underwriting package and the end of the month just prior to the month in which the Origination Date occurs. For example, if the Mortgage is originated on April 17, the income and expense statement must cover the period of time through March 31.
- p. **The following Riders must be attached to the applicable Loan Document:**

Mortgages less than or equal to \$20,000,000 (Middle Market)	“Rider to Multifamily Loan and Security Agreement – Single Purpose Entity Borrower (Loans \$20,000,000 or Less)”
Mortgage or crossed pools equal to or greater than \$25,000,000 but less than \$100,000,000	“Rider to Multifamily Loan and Security Agreement – Cooperation with Rating Agencies and Investors”
Mortgage or crossed pools greater than \$100,000,000	“Rider to Multifamily Loan and Security Agreement – Cooperation with Rating Agencies and Investors”
	“Rider to Multifamily Loan and Security Agreement – Additional Provisions – Sale or Securitization of Loan”
Individual Mortgage that is \$100,000,000 or greater	“Rider to Multifamily Loan and Security Agreement – Splitting the Note”
	“Rider to Guaranty – Splitting the Note”
Lease-up, Value Add, Float-to-Fixed, Loan not intended for Securitization	“Rider to Multifamily Loan and Security Agreement – Splitting the Note”
	“Rider to Guaranty – Splitting the Note”

**27.5 Additional conditions applicable to an early rate-lock application; Freddie Mac’s reliance (10/05/07)**

The Seller acknowledges that Freddie Mac has or will incur certain financial liabilities in connection with the early rate-lock application in reliance upon the veracity and accuracy of all

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representations, warranties, statements, certificates and other information furnished to Freddie Mac by the Seller in connection with the early rate-lock application and the Mortgage regardless of whether any of such documents were prepared by the Seller or whether the Seller knew or had reason to know the accuracy of their contents. The Seller assumes responsibility for the truth and accuracy of all information delivered by it to Freddie Mac in connection with the early rate-lock application.