

Bulletin

NUMBER: M2015-3

TO: Freddie Mac Multifamily Sellers and Servicers

June 30, 2015

SUBJECTS

With this Bulletin for the Multifamily Seller/Service Guide (Guide), we are:

- Adding a number of requirements (which previously appeared in the Commitment or early rate-lock application) to our chapters for Property and Borrower Fundamentals, to streamline the process for the review and approval of
 - Condominiums, including 100 Percent Borrower-Owned Condos, Partial Condos and Fractured Condos
 - Tenancies-in-common (TICs)
 - Trusts
- Making minor revisions to our requirements for the review of Borrower, SPE Equity Owner and guarantor organizational documents
- Clarifying certain requirements for Independent Properties and Properties subject to Shared Access Agreements and/or Shared Use Agreements and reorganizing the applicable provisions
- Making a minor clarification to our requirements for zoning and building code conformity
- Modifying some of our appraisal requirements for Properties with fewer than 50 units, and making additional minor revisions to our appraisal requirements for all Properties
- Updating our requirements for the Multifamily Manufactured Housing Community (MHC) product
- Clarifying the manner in which Freddie Mac expects Reserves to be administered upon the origination of a Supplemental Mortgage
- Extending the due date for the receipt of the Sales Data Update Template
- Updating our requirements for the Servicer's responsibility following a natural disaster loss
- Revising and renaming Form 104, Loan and Real Estate Owned (REO) Expenses and Income, and adding the Document Management System (DMS) as the method of delivery to Freddie Mac
- Updating Form 1143, Multifamily Principal and Interest Custodial Account Reconciliation Worksheet

We are also making these changes to Chapters 8 and 9 of the Small Balance Loan (SBL) Addendum.

Effective dates

The revisions announced by this Bulletin are effective immediately.

Conclusion

More details on these changes are provided on the pages that follow. Guide text for the changes announced in this Bulletin is highlighted in green on AllRegs. If you have any questions about this Bulletin, please call your Freddie Mac representative.

Sincerely,

David Brickman
Executive Vice President
Multifamily

Property and Borrower Fundamentals

Condominiums

Freddie Mac is adding Sections 8.17(a)-(e) to the Guide to provide requirements for Condominiums, including 100 percent Borrower-owned Condos, Partial Condos and Fractured Condos. These requirements were previously contained in the Commitment and early rate-lock application forms.

For underwriting purposes, the Seller/Servicer must now submit to Freddie Mac the following information in the applicable underwriting package:

- The total number of units subject to the Condominium regime
- The number of Condominium Units owned by the Borrower
- The percentage of Borrower's undivided interest in the common elements of the Condominium
- If the Borrower does not own 100 percent of the real property subject to the Condominium regime, whether the Property is
 - A "Partial Condo", where the Property consists of all residential units in the Condominium but there are commercial, office, parking or other Condominium Units that will not be part of the collateral for the Mortgage, or
 - A "Fractured Condo", where the Property does not consist of all residential units in the Condominium and some residential Condominium Units have been sold to third party purchasers
- The number of members that comprise the board of directors of the Condominium Association and the number of members of the board of directors that the Borrower controls

For all Condominiums, the Seller/Servicer's counsel must provide a PLIM addressing issues about the rights of the Condominium Mortgagees and Condominium Unit owners, as well as any additional information that a prudent lender would consider in its review of the Condominium Documents.

There are no additional underwriting requirements for a 100 percent Borrower-owned Condo. For a Fractured Condo or a Partial Condo, the Seller/Servicer's counsel must provide one of the following:

- The Seller/Servicer's counsel must confirm in a preliminary legal issues memorandum (PLIM) that the Condominium meets all of the requirements set forth in Section 8.17(c); no further analysis will need to be submitted.
- If the Condominium fails to fully satisfy the requirements and the Condominium Documents will not be modified prior to the Origination Date of the Mortgage to comply with the requirements, the Seller/Servicer's counsel must provide a legal analysis detailing (i) the requirements that will not be satisfied, (ii) the counsel's recommendation as to whether Freddie Mac should accept the Condominium without the Condominium Documents being fully compliant, and (iii) the counsel's reasoning supporting the recommendation.

For Fractured Condos, the PLIM must also address the following issues:

- Whether any statutes or case law would prevent or impair the Borrower (or Condominium Mortgagee in the event of foreclosure) from exercising control over the Condominium and/or the Condominium Association

- Whether any State or local laws or regulations would prevent the developer of the Condominium, or anyone obtaining an interest in the developer of the Condominium, from obtaining control of the board of directors of the Condominium Association
- Whether the offering and disclosure requirements of the condominium statute apply to a bulk sale of Condominium Units
- Whether there is any statutory risk of the Borrower becoming a “developer in lieu” with legal liability for claims by existing Condominium Unit owners

The complete condominium requirements are found in Sections 8.17(a)-(e). We are also revising the underwriting checklists (Exhibit 1, Sections 1.1, 1.26, and 1.29-1.33) and Section 55.2 to list the additional items that must be included in the underwriting package.

Tenancies-in-Common

We are adding Section 9.12 to address requirements for tenancies-in-common (TICs). These requirements were previously contained in the Commitment and early rate-lock application forms. No substantive changes have been made to these requirements. As is currently the case, for a TIC to be an eligible Borrower there may not be more than 10 TIC owners and each owner must be a Single Purpose Entity (SPE), regardless of the size of the loan. The TIC requirements specify the general requirements, requirements for management, limitations on TIC owners and requirements related to the Mortgage that the TIC Agreement must contain.

The Seller/Servicer’s counsel is no longer required to send a PLIM containing an analysis of every Tenancy in Common Agreement. Instead, the Seller/Servicer’s counsel is only required to provide a PLIM explaining (i) which requirements will not be satisfied, (ii) the counsel’s recommendation for whether Freddie Mac should accept the agreement without its being fully compliant, and (iii) the counsel’s reasoning for making such recommendation. If the TIC Agreement meets all of Freddie Mac’s requirements, the Seller/Servicer’s counsel can inform us of this in the PLIM. This change will greatly decrease the length of the PLIMs that the Seller/Servicer’s counsel is required to provide.

These changes can be found in Sections 9.2(a), 9.12 and 9.12(a)-(c).

Trusts

We are revising our eligibility requirements for revocable and irrevocable trusts as follows:

- A revocable or irrevocable trust may be an eligible guarantor.
- A revocable or irrevocable trust, or a Massachusetts business trust, may be a Borrower only in Freddie Mac’s discretion following review of the PLIM, organizational documents and a legal analysis provided by the Seller/Servicer’s counsel, where applicable.
- A Massachusetts business trust is not an eligible Borrower for a loan that will be securitized in a REMIC trust.
- A revocable or irrevocable trust may not be an SPE Equity Owner.

The Seller/Servicer must examine the trust agreement to determine whether it has received a complete copy of the trust agreement, including all amendments. If the trust is a revocable trust, the Seller/Servicer must determine that:

- The settlor (also known as the grantor) is the trustee or one of the co-trustees or there is an institutional trustee.

- The settlor is still alive and is a co-obligor or co-guarantor with the trust.

The Seller/Servicer's counsel must examine the trust agreement to determine that the trust meets a number of conditions specific to trusts, as well as more general requirements pertaining to the organizational documents. Unless specifically requested by Freddie Mac, this analysis is not required for a trust that is a Borrower Principal but is not a guarantor. As noted above, the Seller/Servicer's counsel is no longer required to send a PLIM containing an analysis of every trust agreement. Instead, the Seller/Servicer's counsel is only required to provide a PLIM explaining (i) which requirements will not be satisfied, (ii) the Seller/Servicer's counsel's recommendation for whether Freddie Mac should accept the trust agreement without its being fully compliant, and (iii) the counsel's reasoning for making such recommendation. If the trust agreement meets all of Freddie Mac's requirements, the Seller/Servicer's counsel can inform us of this in the PLIM. This change will greatly decrease the length of the PLIMs that the Seller/Servicer's counsel is required to provide.

These changes can be found in Sections 9.6(a)-(c) and 9.7.

Review of Borrower, SPE Equity Owner and guarantor organizational documents

We are clarifying our provisions to make it clear that the Seller/Servicer's counsel must review the organizational documents for any entity, including a trust, investment fund or REIT, that is a Borrower, SPE Equity Owner, or guarantor. We are revising the conditions that must be met to specify that there must be no risk of impairment of Freddie Mac's rights resulting from the structure or operation of the entity that would be unacceptable to a prudent institutional lender.

In addition, for all Mortgages except SBL Mortgages

- The organizational documents of a Borrower that is required to be an SPE must contain SPE covenants which require the Borrower to meet the requirements set forth in Section 6.13 of the Loan Agreement.
- The organizational documents of each SPE Equity Owner that is required to be an SPE must contain SPE covenants that meet the requirements set forth in Section 6.13 of the Loan Agreement.

The SPE covenants in the organizational documents are not required to be identical to those contained in the Loan Agreement but must be substantially similar.

If the organizational documents do not meet Freddie Mac's requirements, the Seller/Servicer's counsel must describe the differences and provide its recommendations in the PLIM. If the organizational documents fully satisfy all of the requirements, the Seller/Servicer's counsel must confirm this in a PLIM.

These changes can be found in Section 9.7.

Independent Properties, Shared Access and Shared Use

Despite the number of modifications to Sections 8.6, 8.8 and 8.9, we have not made any substantive changes to these Sections. We have added defined terms and reordered the subsections to make our requirements clearer regarding eligibility for purchase of a loan with a Property that is not an Independent Property and/or which has a Shared Access or Shared Use Agreement. We have also

revised the provisions to group together the requirements for the review of the Shared Use and/or the Shared Access Agreement, the underwriting requirements, and the additional requirements regarding Appraisals and title insurance.

The Seller/Service's counsel is no longer required to send a PLIM containing an analysis of every Shared Use and/or Shared Access Agreement. Instead, the Seller/Service's counsel is only required to provide a PLIM explaining (i) which requirements will not be satisfied, (ii) the counsel's recommendation for whether Freddie Mac should accept the noncompliant agreement without its being fully compliant, and (iii) the counsel's reason for making such recommendation. As noted above, this will decrease the length of the PLIM and make it more efficient for the Seller/Service's counsel to review these agreements.

The Seller/Service should review the following sections to get a complete understanding of our requirements: 8.6(a)-(e), 8.8(a)-(e), and 8.9(a)-(g). We have also revised the Guide Glossary, Section 55.2, and the underwriting checklists (Exhibit 1, Sections 1.1, 1.26, 1.29, 1.30, and 1.32) to reflect these changes.

Zoning and Building Code Conformity

With respect to zoning and building code conformity, we are clarifying in Section 8.5 that if it is not possible to obtain the statement of full restoration from the zoning authority, Freddie Mac may accept a copy of legislation or a variance provided that this documentation demonstrates that the Property may be rebuilt as is in the event of a partial or full casualty loss.

Revisions to Appraisal Requirements

Appraisal Form

For all Properties, including those with fewer than 50 units, Form 71A, Appraisal Report—Residential Income Property, may be used for an Appraisal if appropriate for the scope and complexity of the appraisal assignment. If the appraiser elects to use Form 71A, the appraiser must comply with the instructions and guidelines on the appraisal form and the requirements of Chapter 12. As before, Freddie Mac retains the right to determine that the use of Form 71A is appropriate.

For Properties with fewer than 50 units, Freddie Mac will accept a modified narrative report if the scope of the Appraisal is not complex. Questions about the acceptability of the scope, format, and content of a modified narrative reporting format can be directed to the *Director, Multifamily Appraisals*.

Regardless of the reporting format, the appraiser must comply with all applicable Freddie Mac, federal and State appraisal, development and reporting requirements.

Appraisal Completeness

All Freddie Mac Appraisals must adequately describe the geographic area, neighborhood, rental competition, sales comparables, site and improvements. Generally, the Appraisal must demonstrate a market value supported by the reconciliation of the three recognized approaches to value, the Income Approach, Sales Comparison Approach, and Cost Approach. The appraiser must thoroughly explain

and support the exclusion of any of the three approaches to value. Section 12.12(a) has been revised to reflect this change.

For Properties with fewer than 50 units, the following modified requirements will apply:

- If the Property is more than five years old, Freddie Mac will not require a Cost Approach or that a separate analysis of land value be developed.
- The appraiser may use at least four rental comparables, rather than the six rental comparables previously required. See Section 12.16.
- The capitalization rate must be supported with comparable sales and with the Band of Investment analysis. The appraiser is encouraged, but not required, to also provide personal surveys and interviews with local market participants and/or to develop the capitalization rate with the Debt Coverage Ratio methodology. See Section 12.14(c)(4).

Property Area Information

When describing the Property's market, the appraiser should emphasize the subject's neighborhood influences. However, for Appraisals on Properties with fewer than 50 units, regional, State, or metropolitan market descriptions should be eliminated from the Appraisal report unless there is a specific market influence on the Property that transcends the immediate neighborhood. When broader influences impact the Property, the appraiser should describe those influences with specificity – inclusion of a “boilerplate” market, metropolitan, or regional description in the report is discouraged.

Appraiser Qualifications

For Appraisals for Properties with fewer than 50 units, only one of the appraisers signing the Appraisal must meet the requirement of Section 12.4(a). For all other Properties, our requirements do not change: each appraiser signing the Appraisal must meet the requirements of Section 12.4(a).

Development of a Multiplier Analysis

Section 12.14(c)(5) has been revised to address our requirements for all Appraisals when a multiplier analysis is developed for a Property. Please note that a net operating income multiplier or net operating income adjustments are never acceptable to Freddie Mac, and Freddie Mac does not recommend development of a multiplier for any Property with greater than 30 units, unless this methodology is an accepted local practice.

When use of the valuation from a multiplier analysis is appropriate, development of the multiplier analysis does not exempt the appraiser from adequately analyzing and discussing the Property's operating expenses as required by section 12.14(c)(3).

For Appraisals for Properties with fewer than 50 units, we have modified Section 12.14(b) to indicate that the valuation from a multiplier analysis, when developed, should be reported in the Income Approach.

Conditions for an Appraisal Trainee to Co-sign

For all Properties, we are revising Section 12.4(b) to clarify the conditions necessary to permit an appraisal trainee to co-sign the Appraisal. An appraisal trainee may co-sign an Appraisal provided

that the appraisal trainee is currently registered as an appraisal trainee in the State in which the Property is located and the Appraisal clearly and prominently states the trainee's status, license or certification identification number, and specific role in the appraisal project (including whether or not the trainee inspected the Property) as outlined in Section 12.4(b). Trainees cannot be the sole appraiser to make an inspection of the Property.

All appraisers that sign the Certification in the Appraisal, including the appraisal trainee, must take professional responsibility for the trainee's content, conclusions, and discussions within the Appraisal.

Section 12.12(b) has also been revised to reflect this change.

Manufactured Housing Requirements

Chapter 22: Originating a Mortgage under the Multifamily Manufactured Housing Community Product has been revised to reflect various updates to the product. We have updated Section 22.2 to:

- Clarify that an MHC Mortgage is not eligible for purchase by Freddie Mac if the Borrower is engaged in retail sales or financing of Manufactured Homes, including any rent-to-own programs
- Reflect that stabilized occupancy is generally defined as an occupancy rate of 85 percent
- Change the requirement of daily, on-site property management to a preference
- Add a new sub-section permitting origination of a loan on Properties located in Special Flood Hazard Area subject to the insurance requirements in Chapter 31 including Section 31.28 which outlines insurance requirements specific to MHC Properties. If any Manufactured Homes are located in a flood zone, the Borrower must provide a certification that tenants have been notified regarding the flood zone.
- Permit waivers of the wood-damaging insect inspection requirements of Section 8.2(e), the Moisture Management Plan requirements of Section 8.3(a), and the asbestos testing requirements of Section 13.6(b), provided certain conditions are satisfied.

In addition, we now require an affordability analysis be included in the Appraisal that compares the cost of renting or owning a Manufactured Home in the subject Manufactured Housing Community to the cost of owning a single-family dwelling or renting an apartment in the local market. Section 22.5(b)(4) has been added to reflect this change.

We have revised Section 22.6(b) to permit a waiver of the Seismic Risk Analysis Report at Freddie Mac's discretion, subject to additional requirements and to permit electrical power under 60 amperes for recreational vehicle (RV) sites. The requirements of Section 14.5(c) of the Guide must otherwise be met.

Finally, we have added Section 22.13 to require that the Seller/Service submit a completed Manufactured Housing Community Questionnaire with the PLIM in the applicable underwriting package. Section 55.2 and the conventional underwriting checklist found in Exhibit 1, Section 1.1 have been updated to reflect this change.

Reserve Requirements for Supplemental Mortgages

We are adding a new subsection to Section 39.2 to eliminate any ambiguity and make clear our expectation that upon origination of a Supplemental Loan, the holder of the first lien Loan will begin

to collect any previously-deferred Replacement Reserve Deposits or Imposition Deposits for taxes, insurance, and/or ground rents. Upon Borrower request, however, Freddie Mac will consider permitting continued deferral of collections for taxes, insurance, and/or ground rents, but only in extremely limited circumstances, where the loan-to-value ratio is low, and the debt coverage ratio is high.

Sales Data Update Template

We are extending the due date for the receipt of the Sales Data Update Template in response to requests by our Seller/Servicer network. Effective with the publication of this Bulletin, the Seller/Servicer must submit the Sales Data Update Template on a monthly basis, by the close of business on the 12th day of the month. When the 12th day of the month falls on a Freddie Mac non-Business Day, the Sales Data Update Template will be due on the first Freddie Mac Business Day after the 12th day of the month. We will publish in the coming weeks an updated version of the *Due Date Calendar for Monthly Reporting and Remitting* on FreddieMac.com.

These changes can be found in Section 54.13.

Servicer's Responsibilities following a Natural Disaster Loss

In Section 43.8(g), we are adding that when a Servicer learns of a natural disaster via media or otherwise, the Servicer must

- Review its Freddie Mac portfolio for potentially impacted Properties
- Contact the Borrower for each of these potentially impacted Properties to determine if the Property suffered any damage and if so, the known extent of the damage
- Promptly send an email to *Multifamily Asset Management, Servicer and Data Management* listing the potentially impacted Properties and initial details as to whether damage occurred

Form 104, Loan and Real Estate Owned (REO) Expenses and Income

We are renaming Form 104, Statement of Loan and Real Estate Owned (REO) Expenses and Income to Form 104, Loan and Real Estate Owned (REO) Expenses and Income and are now requiring its submission via the Document Management System (DMS) using the DMS Borrower Transaction instructions.

The Form itself has been updated with additional billing codes and the removal of requests for information no longer pertinent to Multifamily loans. Guide references to the Form in Chapters 44, 45, and 54 have been updated to refer to the new name. The Directory has also been modified to remove the mailing address once used for Form 104 processing.

Form 1143, Multifamily Principal and Interest Custodial Account Reconciliation Worksheet

Freddie Mac is revising Form 1143 to include additional comments and instructions for the user.