

**Announcement SVC-2010-10****August 2, 2010****Miscellaneous Servicing Policy Changes****Introduction**

This Announcement describes updates, clarifications, and reminders to several servicing policies, including:

- Retirement of HomeSaver Advance™
- Technology Usage and Electronic Invoice Submission Charges to Attorneys and Trustees
- Prohibition against Servicer-Specified Vendors for Fannie Mae Referrals
- Prohibition on Outsourcing Fees, Referral Fees, Packaging Fees, and Similar Fees
- Attorney or Trustee File Transfers
- New Documentation Aging Requirements for Loss Mitigation Options
- Mandatory Nature of Retained Attorney Network
- Deeds-in-Lieu of Foreclosure
- Clarification Regarding Foreclosure Actions in the Name of MERS®
- Monitoring Pooled from Portfolio (PFP) Mortgage Loans
- Servicer Responsibilities for Non-Escrow Mortgage Loans
- Audit Confirmation Request Process Changes

**Retirement of HomeSaver Advance*****Servicing Guide*, Part VII, Section 609: HomeSaver Advance**

HomeSaver Advance (HSA), introduced in 2008, was designed to bring delinquent first lien mortgage loans current when a repayment plan was not feasible. HSA was the preferred option to a capitalization-only modification. As the number of other loan workouts has increased, the number of HSA loans purchased by Fannie Mae has been substantially reduced.

Effective September 30, 2010, the HSA option will be retired. As such, all HSA loans must be processed, completed, and delivered on or before that date. Servicers should use the other foreclosure prevention options available, as indicated in the *Servicing Guide*, Part VII, Chapter 6: Foreclosure Prevention Alternatives, and as updated by subsequent announcements.

**Technology Usage and Electronic Invoice Submission Charges to Attorneys and Trustees*****Servicing Guide*, Part VII, Section 501.03: Allowable Attorney Fees, and Part VIII, Section 104.04: Attorney (or Trustee) Fees**

Fannie Mae's current policy indicates that the amount of any fee charged to any attorney or trustee for technology usage or electronic invoice submission must be reasonable in relation to the benefit received by the attorney. Fannie Mae has been asked to define a "reasonable" fee in connection with technology usage.

Effective September 1, 2010, Fannie Mae is imposing a limit of \$25.00 per loan for the life of a default (including all portions of the foreclosure and bankruptcy process) that any attorney or trustee handling a Fannie Mae mortgage loan may pay for technology charges. This amount is not to be charged as a cost to the borrower and will not be reimbursed by Fannie Mae.

In addition, effective September 1, 2010, the maximum amount any attorney or trustee handling a Fannie Mae mortgage loan may pay for the submission of electronic invoices is limited to \$10.00 for the life of the loan, regardless of the number of reinstatements, foreclosure referrals, bankruptcy filings or invoices submitted. The maximum fee is \$5.00 for the submission of electronic invoices relating to a foreclosure (regardless of the number of invoices) and an additional \$5.00 for the submission of electronic invoices if a bankruptcy is filed on the same loan (regardless of the number of invoices). These fees are not to be charged as a cost to the borrower and will not be reimbursed by Fannie Mae.

Any amounts charged by third-party vendors for technology charges or electronic invoice submission in excess of these limitations are the responsibility of the servicer and will not be reimbursed by Fannie Mae.

## **Prohibition Against Servicer-Specified Vendors for Fannie Mae Referrals**

### ***Servicing Guide, Part VII, Section 501.03: Allowable Attorney Fees, and Part VIII, Section 104.04: Attorney (or Trustee) Fees***

Effective September 1, 2010, Fannie Mae is prohibiting servicers from directly or indirectly requiring or encouraging attorneys or trustees to use specified vendors in connection with Fannie Mae referrals, including, but not limited to, title companies, posting and publication vendors, and service of process vendors. Attorneys and trustees must be allowed to select vendors of their choice based on their assessment of factors such as the cost efficiency, quality, reliability, and timeliness of the services provided by the vendor.

Fannie Mae is also reminding servicers that their arrangements with vendors and other service providers, particularly affiliates, must not be tainted with an actual or perceived conflict of interest. Fannie Mae requires servicers, attorneys, and trustees to use the most cost-efficient and effective vendors to assist in processing Fannie Mae foreclosures and bankruptcy cases without regard to arrangements that could provide a financial benefit directly or indirectly to servicers.

If an attorney or trustee wishes to use a vendor that is either the servicer itself, an outsourcing company, or other third-party vendor utilized by the servicer to assist in servicing defaulted mortgage loans, or an affiliate of the servicer, outsourcing company, or third-party vendor, the attorney or trustee must obtain Fannie Mae's prior written approval. Requests for approval must be directed to [retained\\_attorney@fanniemae.com](mailto:retained_attorney@fanniemae.com).

## **Prohibition on Outsourcing Fees, Referral Fees, Packaging Fees, and Similar Fees**

### ***Servicing Guide, Part VII, Section 501.03: Allowable Attorney Fees, and Part VIII, Section 104.04: Attorney (or Trustee) Fees***

Servicers are reminded that Fannie Mae prohibits the servicer, its agents, and any outsourcing firm it employs from charging (either directly or indirectly) any outsourcing fee, referral fee, packaging fee, or similar fee to any attorney or trustee in connection with any Fannie Mae mortgage loan. This requirement is in place, in part, to deter actual and potential conflicts of interest that may arise and compromise the overall effectiveness of service provided to Fannie Mae.

To help ensure compliance with this requirement, Fannie Mae explicitly prohibits:

- the servicer;
- any outsourcing company or other third-party vendor utilized by the servicer to assist in servicing defaulted mortgage loans (for example, referring loans to foreclosure or bankruptcy, monitoring attorney or trustee performance, or providing administrative support services); and
- any affiliate of the servicer, outsourcing company, or third-party vendor

from directly or indirectly charging any amounts to or receiving any payments or any benefits from attorneys or trustees or their affiliates in connection with any Fannie Mae mortgage loan or service provided directly or indirectly with respect to any Fannie Mae mortgage loan except as Fannie Mae may expressly permit.

Fannie Mae expressly permits:

- servicers to refer Fannie Mae mortgage loans to affiliated foreclosure trustees (in Arizona, California, Washington, and in jurisdictions not covered by the retained attorney network where the use of trustees to conduct foreclosures is not prohibited by law) and those trustees to be paid the allowable fees and reimbursed expenses in accordance with Fannie Mae's guidelines;
- outsourcing companies or third-party vendors utilized by the servicer to assist in servicing defaulted mortgage loans to be paid fees by attorneys or trustees for actual and necessary technology usage and electronic invoice submission as described elsewhere in this Announcement; and .
- the benefit that servicers may receive from attorneys and trustees having access to and utilizing data obtained from the servicer's systems through "direct sourcing" arrangements.

Any other charges, payments, or benefits from attorneys or trustees or their affiliates in connection with Fannie Mae mortgage loans will require Fannie Mae's prior written approval.

The servicer is responsible for ensuring compliance with these requirements. Further, if the servicer utilizes an outsourcing company or other third-party vendor to assist it in servicing defaulted loans, the servicer must diligently monitor and manage its outsourcing company or vendor to ensure all Fannie Mae servicing guidelines are fully met in a timely and cost-effective manner.

## **Attorney or Trustee File Transfers**

### ***Servicing Guide*, Part VII, Section 501: Selection of Bankruptcy Attorneys and Avoiding Delays in Case Processing, and Part VIII, Section 104: Referral to Foreclosure Attorney/Trustee**

Effective immediately, Fannie Mae's prior written approval is required for the transfer of any files from one law firm or trustee to another. Fannie Mae reserves the right to assess compensatory fees for delays caused by unauthorized file transfers and to deny reimbursement of fees and expenses with respect to mortgage loans that are the subject of unauthorized file transfers. Requests for authority to transfer files must be sent via e-mail to [retained\\_attorney@fanniemae.com](mailto:retained_attorney@fanniemae.com).

## **New Documentation Aging Requirements Established for Loss Mitigation Options**

### ***Servicing Guide*, Part VII, Section 601.01: Requesting Preliminary Financial Information**

Fannie Mae is introducing new aging requirements for documentation supporting borrower financial data when determining eligibility for loss mitigation options.

The financial documentation supporting income, expenses, assets, and liabilities may not be more than 90 days old as of the date the servicer is determining the loss mitigation eligibility and structure. These supporting documentation aging requirements must be followed by servicers for loss mitigation options entered into on or after September 1, 2010.

## **Mandatory Nature of Retained Attorney Network**

### ***Servicing Guide*, Part VII, Section 501.01: Fannie Mae-Retained Attorneys, and Part VIII, Section 104.01: Fannie Mae-Retained Attorneys**

Fannie Mae reminds servicers that the use of Fannie Mae-retained attorneys in the 31 jurisdictions covered by the attorney network is mandatory for foreclosure and bankruptcy referrals on or after October 1, 2008, with two exceptions:

- Special guidelines apply for foreclosures in the states of Arizona, California, and Washington, as described in Part VIII, Section 104.02: *Special Rules for Arizona, California, and Washington Foreclosures*.
- If a foreclosure referral was made prior to the time Fannie Mae identified retained attorneys for a jurisdiction, the referral may remain with the original attorney to whom it was referred. This attorney may handle any subsequent bankruptcy case that is filed before completion of the foreclosure or reinstatement of the mortgage loan if the servicer concludes that the attorney has the necessary qualifications.

The 31 jurisdictions covered by the retained attorney network are: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maryland,

Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin.

Fannie Mae may deny reimbursement of fees and out-of-pocket expenses for referrals to non-retained attorneys in jurisdictions covered by the attorney network. In addition, Fannie Mae may impose compensatory fees or sanctions for referrals to non-retained attorneys in jurisdictions covered by the attorney network. Finally, Fannie Mae will require the servicer to reimburse Fannie Mae for any losses that may occur because a non-retained attorney failed to meet his or her responsibilities diligently. If a servicer believes special circumstance, such as pending or threatened litigation, warrant the referral of a foreclosure or bankruptcy matter to an attorney outside the network, the servicer must contact the Fannie Mae legal department at [nonroutine\\_litigation@fanniemae.com](mailto:nonroutine_litigation@fanniemae.com) to seek prior written approval for a non-network referral.

## **Deeds-in-Lieu of Foreclosure**

### ***Servicing Guide, Part VII, Section 606: Deeds-in-Lieu of Foreclosure***

Current policy states that the servicer may not recommend a voluntary deed-in-lieu of foreclosure on a property until it has been listed for sale at market value for three months or more without a reasonable sales offer.

Effective immediately, Fannie Mae is no longer imposing a mandatory listing period before the servicer may recommend a deed-in-lieu as long as all other requirements set out in Part VII, Section 606 are met.

## **Clarification Regarding Foreclosure Actions in the Name of Mortgage Electronic Registration System (MERS)**

Announcement SVC-2010-05, *Miscellaneous Servicing Policy Changes*, provided that effective with foreclosures referred on or after May 1, 2010, MERS must not be named as a plaintiff in any foreclosure action, whether judicial or non-judicial, on a mortgage loan owned or securitized by Fannie Mae. The Announcement further stated that the assignment from MERS to either the servicer or Fannie Mae must be recorded before the foreclosure begins.

Fannie Mae is clarifying the requirement that the assignment from MERS to the servicer or Fannie Mae be recorded before the foreclosure begins in certain circumstances as set forth below. This revised guidance replaces in its entirety that set forth in Announcement SVC-2010-05.

Effective May 1, 2010, MERS must not be named as a plaintiff or foreclosing party in any foreclosure action, whether judicial or non-judicial, on a mortgage loan owned or securitized by Fannie Mae. When MERS is the mortgagee of record, the servicer must prepare an assignment from MERS to the servicer and bring the foreclosure in its own name unless Fannie Mae specifically allows the foreclosure to be brought in the name of Fannie Mae. In that event, the assignment must be from MERS to Fannie Mae, in care of the servicer at the servicer's address for receipt of notices. The assignment must be prepared and executed before the foreclosure begins.

If the property is located in a jurisdiction that recognizes the effectiveness of executed, but unrecorded, assignments, the foreclosure may be initiated prior to recordation of the assignment. In these cases, the assignments should be recorded as soon as possible, in compliance with the laws of the jurisdiction where the property is located. If the jurisdiction requires the assignment to the servicer or Fannie Mae be recorded before proceeding with the foreclosure in the servicer or Fannie Mae's name, the assignment must be recorded before the foreclosure begins.

If an assignment from MERS to either the servicer or Fannie Mae has been recorded from MERS to either the servicer or Fannie Mae and the borrower reinstates the mortgage loan prior to completion of the foreclosure proceedings, the servicer need not re-assign the mortgage to MERS and re-register the mortgage with MERS. Re-assigning and re-registering the mortgage with MERS is not required by Fannie Mae and any such action will be at the discretion and expense of the servicer. If the assignment is executed but not recorded at the time the borrower reinstates the mortgage loan, and the servicer decides to re-register the mortgage with MERS, the servicer should prepare an assignment back to MERS. If the servicer decides not to re-register the loan with MERS, the servicer must make sure the assignment from MERS to the servicer or Fannie Mae is recorded.

Fannie Mae will not reimburse the servicer for any expense incurred in preparing or recording an assignment of the mortgage loan from MERS to the servicer or to Fannie Mae.

The servicer should consult its foreclosure attorney to determine if any other legal requirements apply when conducting foreclosures of mortgage loans in which MERS is the prior mortgagee of record.

## **Monitoring Pooled from Portfolio (PFP) Mortgage Loans**

***Announcement 08-31, Fannie Mae 2009 Single-Family Master Trust Agreement, the Amended and Restated 2007 Single-Family Master Trust Agreement, and Certain Servicing Clarifications and Changes, Including Expanded Loss Mitigation Flexibility, and Announcement 07-03R, Reissuance of the Instructions for the Fannie Mae Single-Family MBS Master Trust Agreement***

Periodically, Fannie Mae will securitize mortgage loans that were purchased for its investment portfolio (whole loan deliveries). All mortgage loans that have been (or may be in the future) sold to Fannie Mae for cash and subsequently securitized into MBS pools (known as Pooled from Portfolio or PFP mortgage loans) must be serviced as MBS mortgage loans though the remittance type remains Actual/Actual or Scheduled/Scheduled Cash.

Servicers are reminded that PFP mortgage loans must be appropriately identified in their records and systems, as well as monitored and serviced according to the appropriate MBS work rules, specifically the management of delinquent loans and general servicing requirements. Fannie Mae provides the MBS pool issue date for each PFP mortgage loan on the PFP-related reports provided through the Servicer's Reconciliation Facility (SURF™). This enables servicers to identify the MBS issue dates and the applicable MBS trust documents for PFP mortgage loans.

## **Servicer Responsibilities for Non-Escrow Mortgage Loans**

## ***Servicing Guide, Part III, Section 103: Escrow Deposit Accounts***

Servicers are reminded that even when the escrow deposit account requirement has been waived, the servicer remains responsible for the timely payment of the taxes and insurance premiums.

If the borrower fails to pay the taxes or does not keep the insurance in force, the servicer must advance its own funds to pay any outstanding bills. The servicer is then required to revoke the waiver, establish an escrow account for the borrower, and begin collecting deposits for an escrow account to pay future bills. The *Servicing Guide, Part VI, Section 304: Reimbursement of Servicer's Advances* provides guidance for obtaining reimbursement from Fannie Mae.

## **Audit Confirmation Request Process Changes**

### ***Servicing Guide, Part X, Section 106: Audit Confirmations***

Fannie Mae currently requires that requests for audit confirmations be mailed to Fannie Mae. Effective immediately, all such requests are to be e-mailed to [investor\\_reporting\\_group\\_mailbox@fanniemae.com](mailto:investor_reporting_group_mailbox@fanniemae.com). This process change applies to both servicers and auditors submitting requests on behalf of the servicer.

To avoid delays, each audit confirmation request must include all of the following information:

- the servicer's name and address,
- an authorized signature of an officer of the financial institution,
- the servicer's 9-digit Fannie Mae servicer number,
- the name and telephone number of a contact person (either with the servicer's institution or auditor), and
- the effective date of the data for the confirmation.

There can be a delay of one month in the availability of data, however, requests are usually completed and returned within 10 business days.

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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 (888-326-6435) with any questions regarding this Announcement.

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