



Fannie Mae®

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# Multifamily Selling and Servicing Guide

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## Chapter 16 Mezzanine Financing and Preferred Equity

### Section 1601 Mezzanine Financing

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#### 1601.01 Description

##### Requirements

A Mortgage Loan with Mezzanine Financing is permitted only if

- the Mezzanine Financing is originated by an approved DUS Lender Affiliate (DLA Mezzanine Financing), or
- Fannie Mae approves the Mezzanine Financing from another source (non-DLA Mezzanine Financing) on a case-by-case basis.

Before underwriting non-DLA Mezzanine Financing, you must contact the Deal Team.

#### 1601.01A Eligible Mortgage Loans

##### Requirements

Mortgage Loans with Mezzanine Financing must:

- be newly originated;
- have an original principal balance of at least
  - \$10 million, for DLA Mezzanine Financing, or
  - \$50 million, for non-DLA Mezzanine Financing;
- be fixed rate; and
- be flagged for MBS additional disclosure per [Form 4098](#).

#### 1601.01B Eligible Terms

##### Requirements

Mezzanine Financing must:

- have a fixed rate or fixed mezzanine rate of return without escalations;
- not have a maturity date, redemption date, trigger date, or require repayment of the Mezzanine Financing during the term of the Mortgage Loan; and



- have a minimum \$1 million origination balance.

### 1601.01C Loss Sharing

#### Requirements

Loss sharing is required on all Mortgage Loans with Mezzanine Financing.

### 1601.01D Lender's Loan Application

#### Requirements

Your loan application form must:

- require the Borrower to indicate whether it has or intends to obtain Mezzanine Financing as part of its organizational or capital structure; and
- inform the Borrower that you may delay approval or revoke any prior approval if the Borrower changes its intention to obtain Mezzanine Financing.

## 1601.02 Underwriting

#### Requirements

You must comply with the following table.

Topic	Requirements
Income Projections	<ul style="list-style-type: none"><li>• Provide support for the income projections used to determine the aggregate amount of the Mortgage Loan and Mezzanine Financing.</li><li>• Demonstrate that the local economics are sufficient and sustainable to support both loans.</li></ul>
Underwritten NCF	<p>Use the same Underwritten NCF to determine the loan amount for</p> <ul style="list-style-type: none"><li>• the Mortgage Loan, and</li><li>• the Mezzanine Financing.</li></ul>



Topic	Requirements
Refinance Analysis	<p>Prepare a refinance analysis that:</p> <ul style="list-style-type: none"> <li>• incorporates the terms of both the Mortgage Loan and the Mezzanine Financing;</li> <li>• demonstrates that the Borrower will               <ul style="list-style-type: none"> <li>- maintain a positive equity position in the Property throughout the term of the Mortgage Loan, or</li> <li>- have some other incentive (e.g., continuing cash flow) to remain committed to the Property and its successful operation; and</li> </ul> </li> <li>• concludes that there will be sufficient cash flow, NCF growth, and residual value to pay off the Mortgage Loan and the Mezzanine Financing at maturity (as fully extended, if applicable).</li> </ul>
Experience	<p>Ensure that the Sponsor and each Key Principal have sufficient net worth, liquidity, and experience with the Property type and market to justify the origination of the Mortgage Loan and the Mezzanine Financing.</p> <p>If upgrades or rehabilitation are being financed by the Mezzanine Financing, then ensure that the Borrower, each Key Principal, and the mezzanine borrower also have</p> <ul style="list-style-type: none"> <li>• sufficient experience managing the scope of the proposed rehabilitation, and</li> <li>• strong property management experience in the local market.</li> </ul>
Mezzanine Borrower Structure	<p>Ensure the mezzanine borrower is</p> <ul style="list-style-type: none"> <li>• a newly-formed, special purpose, bankruptcy-remote limited liability company or limited partnership,</li> <li>• the sole owner of the Borrower, and</li> <li>• wholly-owned by the Principals of the Borrower.</li> </ul>



Topic	Requirements
Appraisal	If the Mezzanine Financing is funding rehabilitation, ensure the Appraisal states the Property's as-is and as-completed values.
Third-Party Reports	For Mortgage Loans with DLA Mezzanine Financing, include in the underwriting submission, on behalf of your DL Mezzanine Affiliate any: <ul style="list-style-type: none"><li>• internal or third-party inspection reports;</li><li>• PCAs; and</li><li>• architects or engineers reports (or other similar reports) related to the Mezzanine Financing.</li></ul>

### Guidance

You may require a Completion Guaranty ([Form 6018](#)).

The DUS Lender Mezzanine Affiliate may also require a completion guaranty from the Mezzanine Financing borrower.

## 1601.03 Submission

### 1601.03A Materials

#### Operating Procedures

You must submit the following in DUS Gateway when you submit the Mortgage Loan underwriting:

- the Mezzanine Financing sizing model;
- a sources and uses of funds reflecting the Mezzanine Financing proceeds;
- any approvals associated with the Mezzanine Financing; and
- for any Mezzanine Financing that finances rehabilitation:
  - a description of the proposed rehabilitation;
  - the approved rehabilitation budget;
  - the rehabilitation timeline; and
  - the construction or rehabilitation documents.



## 1601.03B Data

### Operating Procedures

To obtain a Commitment, you must complete the Mezzanine Financing fields in DUS Gateway.

## 1601.04 Intercreditor Agreement

### Requirements

For each Mortgage Loan with Mezzanine Financing, you and the Mezzanine Financing lender must execute an intercreditor agreement approved by Fannie Mae.

### Operating Procedures

The Borrower must pay the legal fees if Fannie Mae engages outside counsel to review any intercreditor agreements. These fees are non-refundable, and you must pay the counsel retainer when you submit the underwriting.

### Guidance

You may charge the Borrower your own legal and due diligence fees.

## 1601.05 Servicing

### Operating Procedures

You must service, report, and remit on the DLA Mezzanine Financing per Part V.

In all cases, you, as servicer of the DLA Mezzanine Financing, must promptly notify Fannie Mae of any default on the Mezzanine Financing.

## Section 1602 Preferred Equity

### 1602.01 Description

#### 1602.01A Definitions

### Requirements

Preferred Equity is an equity investment in an entity where the holder is entitled to preferred dividends, distributions, payments, or returns relative to the other equity owners.



Fannie Mae defines 2 types of Preferred Equity.

Type	Definition
Soft Preferred Equity	Preferred Equity that: <ul style="list-style-type: none"><li>• only requires preferred payments or returns to the holder if cash flow from the Property is sufficient to make the payments or returns after satisfying the payment, reserve, escrow, and funding obligations of the Mortgage Loan and all Property operating expenses;</li><li>• has organizational documents that explicitly state that the preferred return may accrue if cash flow from operations is insufficient to pay the return; and</li><li>• does not have a maturity date, redemption date, trigger date, or require repayment during the term of the Mortgage Loan.</li></ul>
Hard Preferred Equity	Preferred Equity that requires preferred payments or returns to the holder, regardless of whether cash flow from the Property is sufficient to make the payments or returns.

## 1602.01B Exclusions

### Guidance

This Section does not apply to:

- Soft Preferred Equity that does not benefit from any remedial rights related to the failure to make or pay any preferred payment of return; or
- any Borrower organizational or capital structures relating solely to the allocation of LIHTCs.

For example, [Part III, Chapter 16: Mezzanine Financing and Preferred Equity, Section 1602: Preferred Equity](#) does not apply to:

- Soft Preferred Equity that is Preferred Equity only because of “promoted interest” or priority “waterfall” distributions in the organizational structure of the Borrower, but does not otherwise benefit from remedial rights when distributions are not paid or made.
- Instances where a provision in the Borrower’s organizational documents allows or requires a forced sale of the Property to a third party in an arm’s length transaction



- if preferred payments or returns are not made, or
- for standard non-recourse guaranties.

### 1602.01C Eligible Mortgage Loans

#### Requirements

Mortgage Loans with Preferred Equity structures must:

- be newly originated;
- be fixed rate; and
- for Hard Preferred Equity,
  - have an original principal balance of at least \$10 million, and
  - be flagged for MBS additional disclosure per [Form 4098](#).

### 1602.01D Structures

#### Guidance

Preferred Equity may be structured in a variety of ways, and appear similar to a traditional equity investment, while having rights or remedies similar to debt, such as Mezzanine Financing.

To determine if the Preferred Equity is Soft or Hard, you should analyze the:

- Borrower's organizational and capital structure;
- Borrower's applicable joint venture or operating agreement with the Preferred Equity provider; and
- rights and remedies of the direct and indirect equity owners against the Borrower.

### 1602.01E Limitations

#### Requirements

Preferred Equity must:

- not have a maturity date, redemption date, trigger date, or require repayment during the term of the Mortgage Loan;
- have a fixed rate of return without escalations during the term of the Mortgage Loan;



- not include cash flow sweeps above the stated return;
- not be cross-collateralized with multiple assets;
- for a deal that has both a Hard Preferred Equity return and Soft Preferred Equity return, be underwritten using the total combined preferred return to calculate the DSCR per Form 4660;
- not have intercreditor or recognition agreements between you and the Preferred Equity holder; all rights of the Preferred Equity holder that you recognize must be contained in the Loan Documents;
- not have side letters; all information, terms, and conditions relating to the Preferred Equity must be contained in the organizational documents; and
- for Hard Preferred Equity, not be less than \$1 million.

You must underwrite the Preferred Equity as Hard Preferred Equity, if any of the following apply:

- the organizational documents do not explicitly state that the preferred return may accrue if cash flow from operations is insufficient to pay the preferred return;
- there are remedies associated with operating benchmarks such as NCF, NOI, or other operating thresholds;
- there are reserves to ensure the payment of the preferred return; or
- the holder of Preferred Equity benefits from a
  - pledge of the general partner's or managing member's interest in the Borrower, or any direct or indirect owner of the Borrower, or
  - guaranty or indemnity from the general partner, managing member, or manager of the Borrower (or any parent or other Person Controlling any of them) with respect to the preferred payment or returns. If a guaranty or indemnity is executed by the Key Principal executing a Guaranty for the Mortgage Loan, the guaranty or indemnity of the preferred payment or returns must be expressly subordinate to the Guaranty for the Mortgage Loan.

## **1602.01F** Lender's Loan Application

### Requirements

Your loan application form must:

- require the Borrower to indicate whether it has or intends to obtain Preferred Equity as part of its organizational or capital structure; and
- inform the Borrower that you may delay approval or revoke any prior



approval if the Borrower changes its intention to obtain Mezzanine Financing.

## 1602.02 Underwriting

### Requirements

For any Mortgage Loan with Preferred Equity, you must comply with the following table.

Topic	Requirements
Guaranty	<p>If the holder of the Preferred Equity benefits from a guaranty or similar indemnity that contains recourse events or similar obligations not otherwise contained in the Loan Documents, you must</p> <ul style="list-style-type: none"><li>• submit the modifications to Fannie Mae for review and approval, and</li><li>• if approved by Fannie Mae, add the events or obligations to the appropriate Loan Document.</li></ul>
Refinance Analysis	<p>Prepare a refinance analysis that:</p> <ul style="list-style-type: none"><li>• incorporates the terms of both the Mortgage Loan and the Preferred Equity;</li><li>• demonstrates that the Borrower will<ul style="list-style-type: none"><li>- maintain a positive equity position in the Property throughout the term of the Mortgage Loan, or</li><li>- have some other incentive (e.g., continuing cash flow) to remain committed to the Property and its successful operation; and</li></ul></li><li>• concludes that there will be sufficient cash flow, NCF growth, and residual value to pay off the Mortgage Loan and the Preferred Equity (if applicable) at maturity.</li></ul>



Topic	Requirements
Replacement Guarantor	Identify an acceptable replacement guarantor that complies with the Guide for Key Principals for any Mortgage Loan with <ul style="list-style-type: none"><li>• Hard Preferred Equity, and</li><li>• Soft Preferred Equity if modifications to the transfer provisions of the Loan Documents are requested for the benefit of the Soft Preferred Equity holder.</li></ul>
Loan Documents	Use the Loan Documents for Preferred Equity per the Loan Documentation Requirements (Form 6000) for any Mortgage Loan with <ul style="list-style-type: none"><li>• Hard Preferred Equity, and</li><li>• Soft Preferred Equity if modifications to the transfer provisions of the Loan Documents are requested for the benefit of the Soft Preferred Equity holder.</li></ul>

## 1602.03 Hard Preferred Equity

### 1602.03A Submission

#### Operating Procedures

You must submit the following in DUS Gateway:

- a sources and uses of funds reflecting the investment of the Hard Preferred Equity holder;
- Exhibit B to the Multifamily Underwriting Certificate (Borrower) (Form 6460.Borrower);
- a complete organizational chart of the Borrower, including upper tier entities or other owners, that shows the respective ownership percentages of Persons holding any
  - direct or indirect control of the management and operations of the Borrower,
  - ownership of a direct or indirect interest of 25% or more in the Borrower, and
  - ownership of any other direct or indirect interest in the Borrower that constitutes Hard Preferred Equity; and



- copies of the organizational and other documents that govern the
  - Hard Preferred Equity, and
  - Hard Preferred Equity holder, including any
    - term sheets,
    - private placement memoranda,
    - operating agreements,
    - pledge agreements,
    - guaranties, or
    - similar arrangements.

### **1602.03B** Outside Counsel and Due Diligence Fees

#### Operating Procedures

The Borrower must pay the legal fees if Fannie Mae engages outside counsel.

These fees are non-refundable, and you must pay the counsel retainer when you submit the underwriting.

#### Guidance

You may charge the Borrower your own legal and due diligence fees.



# Glossary

## A

### Affiliate

When referring to an affiliate of a Lender, any other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.

When referring to an affiliate of a Borrower or Key Principal:

- any Person that owns any direct ownership interest in Borrower or Key Principal;
- any Person that indirectly owns, with the power to vote, 20% or more of the ownership interests in Borrower or Key Principal;
- any Person Controlled by, under common Control with, or which Controls, Borrower or Key Principal;
- any entity in which Borrower or Key Principal directly or indirectly owns, with the power to vote, 20% or more of the ownership interests in such entity; or
- any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

#### **Synonyms**

- Affiliates
- Affiliate's

### Appraisal

Written statement independently and impartially prepared by a qualified appraiser stating an opinion of the Property's market value

- as of a specific date, and
- supported by the presentation and analysis of relevant market information.

#### **Synonyms**

- Appraisals

## B



**Borrower** Person who is the obligor per the Note.

**Synonyms**

- Borrowers
- Borrower's

## C

**Commitment** Contractual agreement between you and Fannie Mae where Fannie Mae agrees to buy a Mortgage Loan at a future date in exchange for an MBS, or at a specific price for a Cash Mortgage Loan, and you agree to Deliver that Mortgage Loan.

**Synonyms**

- Committed
- Commitments

## D

**DUS** Delegated Underwriting and Servicing

**DUS Gateway** Multifamily pre-acquisition system, or any successor systems, recording deal registration, Pre-Review and/or waiver tracking, Mortgage Loan Commitments, and decision records.

**DUS Lender** Lender approved to Deliver loans under the Delegated Underwriting and Servicing program.

**Synonyms**

- DL

## F



Form 4660

Multifamily Underwriting Standards identifying Pre-Review Mortgage Loans and containing the underwriting requirements (e.g., debt service coverage ratio, loan to value ratio, interest only, underwriting floors, etc.) for all Mortgage Loans.

**Synonyms**

- Multifamily Underwriting Standards

## G

Guarantor

Key Principal or other Person executing a

- Payment Guaranty,
- Non-Recourse Guaranty, or
- any other Mortgage Loan guaranty.

**Synonyms**

- Guarantors

Guaranty

Payment Guaranty, Non-Recourse Guaranty, or other guaranty by a Guarantor for the Mortgage Loan.

## K

Key Principal

Person who

- controls and/or manages the Borrower or the Property,
- is critical to the successful operation and management of the Borrower and the Property, and/or
- may be required to provide a Guaranty.

**Synonyms**

- Key Principals
- Key Principal's

## L

Lender Affiliate

Other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.



**Loan Documentation Requirements**      Loan Documents listed in [Form 6000](#) applicable to the particular Mortgage Loan execution and/or product and features.

**Loan Documents**      All Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan.

**Synonyms**

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents

## **M**

**MBS**      Mortgage-Backed Security

**Mezzanine Financing**      Subordinate debt financing provided to a direct or indirect owner of a Borrower that is secured by a pledge of the direct or indirect equity interest in the Borrower held by the owner, and not by a Lien on the Property.

**Mortgage Loan**      Mortgage debt obligation evidenced, or when made will be evidenced, by

- the Loan Documents, or
- a mortgage debt obligation with a Fannie Mae credit enhancement.

**Synonyms**

- Mortgage Loans
- Mortgage Loan's

**Multifamily Underwriting Certificate**      Multifamily Underwriting Certificate ([Form 6460 series](#)) , and/or other agreement approved by Fannie Mae that provides underwriting information for a Mortgage Loan.

## **P**



## Person

Legal person, including an

- individual,
- estate,
- trust,
- corporation,
- partnership,
- limited liability company,
- financial institution,
- joint venture,
- association, or
- other organization or entity (whether governmental or private).

### **Synonyms**

- Persons
- Person's

## Property

Multifamily residential real estate securing the Mortgage Loan, including the

- fee simple or Leasehold interest,
- Improvements, and
- personal property (per the Uniform Commercial Code).

### **Synonyms**

- Properties
- Property's

## S

## Sponsor

Principal equity owner and/or primary decision maker of the Borrower (often the Key Principal or the Person Controlling the Key Principal).

### **Synonyms**

- Sponsors
- Sponsor's