Fannie Mae®

Multifamily Selling and Servicing Guide

Effective as of September 28, 2026

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221.04 Notifying the Internal Revenue Service about Cancellations of Indebtedness (IRS Form 1099-C)

221.04A When Required

The Internal Revenue Service requires certain mortgage holders, including Fannie Mae, to file information returns when $600 or more of a Mortgage Loan is cancelled. Except as provided in Part V, Chapter 2: Reporting and Remitting, Section 221.04D: Exceptions to IRS Form 1099-C Reporting, the Servicer must file these returns on Fannie Mae's behalf, using IRS Form 1099-C, for all applicable Mortgage Loans (including Mortgage Loan participations if Fannie Mae's percentage ownership of such Mortgage Loan is 50% or greater). If, in the same calendar year, a Mortgage Loan is canceled in connection with a foreclosure or abandonment of secured property, it is not necessary to file both Form 1099-A and Form 1099-C for the same Borrower. Only Form 1099-C need be filed, and the Form 1099-A filing requirement for the Borrower will be met by completing boxes 4, 5, and 7 on Form 1099-C.

221.04B Determining When a Debt Is Cancelled

A debt is cancelled (in whole or part) when any of the following occur:

- discharge in bankruptcy under Title 11 of the U.S. Code;
- receivership, foreclosure, or similar federal or state court proceeding makes the debt unenforceable;
- the statute of limitations applicable to collecting the debt expires (if so determined by a court and any appeal period has expired), or expiration of the statutory period for filing a claim or beginning a deficiency judgment proceeding;
- foreclosure remedies by law end or bar Fannie Maes right to collect the debt (e.g., foreclosure by exercise of the power of sale in the Security Instrument);
- probate or similar proceeding cancels or extinguishes the debt;
- Fannie Mae and the Borrower agree to cancel the debt at less than full consideration;
- a decision or defined policy of Fannie Mae causes collection activity to be discontinued and the debt to be cancelled; or
- expiration of a non-payment testing period.

The Internal Revenue Service presumes that a debt is cancelled

during a calendar year if no payment has been received on the Mortgage Loan during a period (the non-payment testing period) of 36 months, plus the number of calendar months when collection activity was precluded by a stay in bankruptcy or similar bar under state or local law. The presumption may be rebutted, however, if there has been significant, bona fide collection activity at any time during the calendar year, or if facts and circumstances, existing as of January 31 of the calendar year following expiration of the 36-month period, indicate that the indebtedness has not been discharged.

221.04C Preparing IRS Form 1099-C

The Servicer is responsible for completing the Cancellation of Debt (IRS Form 1099-C) accurately, and for filing it with the Internal Revenue Service and providing the information to the Borrower and to Fannie Mae by the required dates. The form must be filed on or before February 28 (or March 31 if filing electronically) of the year following the calendar year in which the discharge of indebtedness occurs.

If the Internal Revenue Service penalizes Fannie Mae because the Servicer failed to file a return or filed an incorrect or late return, Fannie Mae will require the Servicer to reimburse Fannie Mae for any penalty fees the Internal Revenue Service assesses (unless the Servicer can document that it met the filing requirements).

The Servicer also must furnish the Borrower with an information statement before January 31 of that year. The requirement for notifying the Borrower can be satisfied by sending Copy B of a completed IRS Form 1099-C (or a substitute statement that complies with Internal Revenue Service requirements for substitute forms) to the Borrower's last known address, and the Servicer must send Copy C to those states that require it. When the form is filed on Fannie Mae's behalf, it must show Fannie Mae's name as the Creditor, Fannie Mae's address and federal identification number (52-0883107), and include a legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service.

Information that must be reported on IRS Form 1099-C includes:

- the Borrower's name, address, and taxpayer identification number (the Social Security number if the borrower is a natural person);
- the date the debt was cancelled;
- the amount of the cancelled debt, which does not include interest or any amount received in satisfaction of the debt from a foreclosure sale or other means;
- a description of the debt, such as mortgage loan, and a description of the Property if a combined IRS Form 1099-C and 1099-A is filed;

- whether the Borrower is personally liable for the debt;
- whether the debt was cancelled in bankruptcy; and
- the fair market value of the Property if a combined IRS Form 1099-C and 1099-A is filed.

If the cancelled Mortgage Loan had an original principal amount of $10,000 or more, was originated after 1994, and involves Borrowers who are jointly and severally liable for the debt, a separate information return for each Borrower must be filed, and each return must report the entire amount of the cancelled debt. If the Mortgage Loan was originated prior to January 1, 1995, or if the original principal amount of the cancelled Mortgage Loan was less than $10,000, and if there are multiple Borrowers, reporting is required only with respect to the primary (or first-named) Borrower. In addition, only one information return is required, regardless of the origination date or the original principal amount, if the Servicer knows, or has reason to know, that co-Borrowers were husband and wife living at the same address when the Mortgage Loan was originated, and does not know or have reason to know that such circumstances have changed when the Mortgage Loan is cancelled.

221.04D Exceptions to IRS Form 1099-C Reporting

Interest. Interest need not be reported. If it is reported as part of the cancelled debt, the IRS Form 1099-C instructions require that it be shown in a separate box on the form.

Non-principal amounts. Cancellation of amounts other than stated principal, including penalties, fines, fees, and administrative costs charged to the Borrower, need not be reported.

Release of a co-Borrower. IRS Form 1099-C need not be filed when one Borrower is released from a Mortgage Loan as long as the remaining Borrowers are liable for the full UPB of the Mortgage Loan.

Guarantor or surety. A guarantor or surety (i.e., any Guarantor or Key Principal executing a Non-Recourse Guaranty or a Payment Guaranty) is not a Borrower for purposes of the debt cancellation reporting requirements, so IRS Form 1099-C is never required.

221.04E Coordination with Reporting Abandonments or Acquisitions

If, in the same calendar year, the Mortgage Loan is cancelled in connection with the acquisition or abandonment of the same Property securing the Mortgage Loan, filing a timely and accurate IRS Form 1099-C will satisfy the requirement to file an IRS Form 1099-A.

Glossary

A

Acquisition	Any Purchase of either the: • Propertys fee simple or leasehold interest via a deed transfer; or • Controlling Interest in the Borrower. **Synonyms** • Acquisitions

B

Borrower	Person who is the obligor per the Note. **Synonyms** • Borrowers • Borrower's

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

M

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
Mortgage Loan Origination Date	Date you fund a Mortgage Loan to the Borrower. **Synonyms** • Mortgage Loan's Origination Date • Origination Date

N

Non-Recourse Guaranty	Guaranty executed by a Key Principal on Form 4501 series or Form 6015 series, or approved by Fannie Mae. **Synonyms** • Guaranty of Non-Recourse Obligations

P

Payment Guaranty	Guaranty executed by a Key Principal on Form 4502 series or Form 6020 series, or approved by Fannie Mae.

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
Principal	Person who owns or controls, in the aggregate, directly or indirectly (together with that Person's Immediate Family Members, if an individual), specified interests in the Borrower per Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 303: Key Principals, Principals, and Guarantors. **Synonyms** • Principals
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

Security	MBS, PFP MBS, or REMIC. **Synonyms** • Securities
Security Instrument	Instrument creating a lien or encumbrance on 1 or more Properties and securing the Loan Document obligations. **Synonyms** • Security Instruments • Security Instrument's
Servicer	Primary Person servicing the Mortgage Loan, including • the originator, • seller, or • a third party. **Synonyms** • Servicers • Servicer's

U

UPB	Unpaid Principal Balance **Synonyms** • UPBs

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