

Multifamily MBS Roadmap

Introduction

This document provides guidance for determining what types of Mortgage Loan structures and features are permissible under Fannie Mae's Multifamily Mortgage-Backed-Security (MBS) execution. Fannie Mae's form Loan Documents are designed to be MBS-compliant with federal income tax requirements for the MBS trust. Each newly issued Multifamily MBS is structured as a Fixed Investment Trust (FIT) that has made a Real Estate Mortgage Investment Conduit (REMIC) election for tax purposes. **Mortgage Loan Document modifications, whether made at the Mortgage Loan Origination Date or during the life of the Mortgage Loan, must create and maintain compliance with the disclosure and tax requirements for the MBS trust.**

This document is intended to supplement, and not substitute for, compliance with the Multifamily Selling and Servicing Guide, including the rules for Additional Disclosure and Form 4098. This document addresses MBS legal issues only and does not change the rules for Lender delegating to Lenders and Servicers the authority to make decisions, which are contained in the Guide and Lender Contracts. Modifications to Mortgage Loans that are implemented using Fannie Mae Multifamily published Loan Documents in accordance with the Guide do not raise MBS legal issues. Any items noted as Additional Disclosure should also be added to the Form 4097. Note that Form 4097 is required when trading an MBS.

When a Mortgage Loan backing a new MBS issuance is expected to have any non-standard terms or characteristics, the Lender must work with the Fannie Mae Deal Team and the Lender's legal counsel to determine if any potential MBS issues require Additional Disclosure before:

- circulating the applicable Form 4097 – Multifamily Required Trade Information for Cash or MBS Loans; or
- entering into a Rate Lock.

When modifying an existing MBS Mortgage Loan, the Lender must work with its Fannie Mae Asset Manager and the Lender's legal counsel to ensure that any proposed post-origination change to the Mortgage Loan or Property conforms to the related MBS disclosure documents.

While this guidance document contains many of the most frequent inquiries related to our MBS, it should not be interpreted as a comprehensive list of all potential situations and outcomes. It should also be noted that a Fannie Mae response that a specific non-standard term or characteristic as to whether a particular request is MBS-compliant does not constitute Deal team approval for that term. Separate Fannie Mae Credit and/or Legal approval must also be obtained for is not in itself determinative of an approval of such request by Fannie Mae, but rather is merely one element required in the overall consideration of such request. Any questions should always be directed to your Fannie Mae Deal Team or Asset Manager.

REMIC Election Overview

To align with the broader MBS market, Fannie Mae began making a REMIC election for its MBS issued on or after January 1, 2021. Any MBS issued as a FIT prior to January 1, 2021 was not affected by this change.

Current forms of the Multifamily MBS Trust Agreement and MBS Prospectus documents, samples of which may be found [here](#), now include language referencing the REMIC election. However, this election does not change the structure of the Mortgage Loans backing our MBS or of the security itself. Our MBS continue to be single class mortgage pass-through certificates which use the same [prefixes](#) and provide investors with guaranteed timely payments of principal and interest.

Pre-Securitization Rules for MBS - Issued On or After 1/1/21

REMIC Eligibility – LTV Test

To be REMIC-election eligible, the Mortgage Loan must be principally secured by real estate collateral. ‘Principally secured’ means that the real estate collateral is sufficient to support a loan-to-value (LTV) that does not exceed 125%. However, since the Real Estate Investment Trust (REIT) rules allow a maximum LTV of 100% for eligible investments, Fannie Mae has set the LTV ceiling at 100% (“LTV test”). Our general underwriting criteria would be well within this requirement for a large majority of transactions. However, there are certain transactions such as Senior Housing Mortgage Loans and phased properties that cross-collateralize Mortgage Loans that may require additional consideration to ensure the LTV test is met.

- **Seniors Housing Property Value**

The appraised value of a Seniors Housing Property is based on three (3) value allocations in the appraisal as follows:

- (i) Real Property Value, including Land and Improvements, which sometimes are broken out separately.
- (ii) Intangibles and Goodwill and/or the Business Value; and
- (iii) Furniture, Fixtures, and Equipment (FF&E) Value.

The LTV Test for REMIC eligibility is **based on the Real Property Value only; value from intangibles or FFE is not included**. If the requirement is not met, the Mortgage Loan is Pre-Review per our credit guidance.

- **Phased Properties with Cross-Collateralized Mortgage Loans**

On certain phased Properties, the Mortgage Loans secured by each Property are cross-collateralized after the origination of the first Mortgage Loan upon the financing of the second phase. When a new Mortgage Loan is cross-collateralized against an existing Mortgage Loan, the combined LTV for all the of the crossed-collateralized Mortgage Loans must not exceed 100% to ensure the “principally secured” test is met.

Determining REMIC Eligibility

The Lender must determine if the MBS being backed by the Mortgage Loan would be REMIC eligible per the Guide and make the following representations regarding REMIC eligibility:

- The Mortgage Loan has not been satisfied, cancelled, released, subordinated, or modified **during the period from the Mortgage Loan Origination Date through the Book-Entry Date for the MBS**, including any change made to:
 - o Mortgage Loan amount, Gross Note Rate, Maturity Date, amortization period, or timing of payments, or Collateral or Lien priority;
 - o Reserve types required per the Loan Documents or the Reserve release provisions;
 - o Mortgage Loan recourse provisions;
 - o New non-recourse carve-outs;
 - o Borrower’s organization type; or
 - o Persons personally liable for the Mortgage Loan, any Payment Guaranty, or additional credit enhancement.
- All Mortgage Loan proceeds were fully funded on the Mortgage Loan Origination Date to the Borrower directly and/or to Reserve accounts or escrows required by Loan Documents.

Contact your Fannie Mae Deal Team for questions regarding REMIC eligibility compliance.

Note: Fannie Mae policy states that the REMIC election is required for all transactions.

However, per the Form 4098, if REMIC eligibility is not met, yet the transaction is [otherwise] approved to be Delivered, then Additional Disclosure will be required on the Form 4097 when trading the MBS to indicate that it is ineligible for re-securitization. Lenders should follow delivery requirements in the applicable Acquisition systems for required Additional Disclosure.

New Origination Loan Characteristics: Here are examples of some Mortgage Loan characteristics that may qualify the Mortgage Loan for REMIC eligibility, but may require Fannie Mae review/approval and Additional Disclosure (see Form 4098):

- **Future Partial Release of Real Estate Collateral:** Releases that are not in connection with a condemnation.
 - REMIC regulations require that the Mortgage Loan remains “principally secured by real estate collateral”, therefore the value of the released collateral, value of the remaining collateral, and current UPB of the Mortgage Loan all impact whether a release would be permissible.
 - Potential impacts to the remaining collateral (e.g., impacts to cashflow, operations, or existing tenants) will also be considered when evaluating release requests.
 - Additional Disclosure will be required for any anticipated partial collateral release.
- **Non-Standard Events of Default:** Items that are not already included in our standard form Loan Documents (e.g., net worth and liquidity covenants, failure to comply with 1031 exchanges provisions),
 - Non-standard events of default introduce increased default and prepayment risk to our investors.
 - Additional Disclosure will be required for any non-standard event of default.
- **Phased Properties and Crossed Loans**
 - Future Cross-Collateralization and/or Cross-Default provisions require Additional Disclosure.
 - Due On Sale or Release Provisions require Additional Disclosure.
 - Additional guidance can be found in the Data Guidance for Cross Defaulted and Cross Collateralized Mortgage Loans Job Aid ([Crossing Job Aid](#)).
- **Operating Deficit Reserves or Guaranty**
 - REMIC structure requires the transaction still be “principally secured” by real estate collateral (can exceed 10% of the total collateral value).
 - A 3-year limit applies to any non-traditional reserves held as cash (e.g., P&I reserves, rent stabilization reserves, etc.).
 - A letter of credit (LOC) minimizes the impact to the REMIC structure and does not include a 3-year time limit.
 - A cash reserve can be converted into an LOC after 3 years.
 - Leverage existing Fannie Mae reserve escrow agreement documentation (e.g., Forms 6102.25, 6268, 6640 and/or 6641).
 - Additional Disclosure is required for any operating deficit reserve.
 - Additional Disclosure is not required for additional guarantees.
- **Completion Guaranty**
 - Review is not required if Form 6018 – Completion Guaranty, is used.
 - Additional Disclosure is generally not required for completion guaranties.
- **Recourse**
 - Mortgage Loans are generally allowed to contain recourse provisions under the REMIC structure.
 - Additional Disclosure is required for recourse provisions not already included in our published Loan Documents
- **Legal Non-Conforming Use**
 - Provide details regarding any potential build-back restrictions,
 - Additional Disclosure may be required.

Post Securitization/Asset Management Rules for All MBS

Existing Loans – Rules of the Road

Regardless of the underlying structure of an MBS (FIT or REMIC election), we do not allow the alteration of a Mortgage Loan if the change would contradict the “at-issuance” disclosures or if the change introduces elements that would have required Additional Disclosure at the time of issuance, or would otherwise have rendered the Mortgage Loan MBS-ineligible.

Loan or collateral changes that are **not** allowed:

- **New Event of Default:** Addition of a new Borrower event of default or Guarantor event of default.
- **Affordable Housing Changes:** Modification of original affordability restrictions or rent or income limitations or conversion of the Property from Conventional to Affordable (e.g., the Property cannot take on additional restrictions post-closing).
- **New Master Lease:** Introduction of a new Master Lease if it includes new Borrower events of default.
- **Delaware Statutory Trust (DST) Changes:** Conversion or transfer of the Borrower from an LLC or other non-DST structure to a DST Structure is not permitted. ~~or the~~ The conversion or transfer of the Borrower from a DST Structure to an LLC or other non-DST structure requires Fannie Mae approval.
- **Prepayment Changes:** Waiver of the lockout period or modification of prepayment provisions prior to Yield Maintenance Period End Date or Prepayment Premium Period End Date.
- **Ownership Interest Changes:** Change in type of Property ownership interest (e.g., conversion of the Borrower's interest in the Property from fee simple to leasehold).
- **Changes in Crossing Relationship:** Cross-default and/or cross-collateralization with a new Mortgage Loan or release of existing cross provisions (without having included prior Additional Disclosure).
- **New Due on Sale:** Addition of a new due-on-sale clause either related to a cross relationship, transfer event, or other reason.

Post Securitization/Asset Management Rules for MBS with REMIC Election - Issued on or After 1/1/21

Asset Management Requests

Any Borrower request that affects the collateral for the Mortgage Loan, whether reviewed on a delegated or non-delegated basis, must be evaluated on a case-by-case basis to determine if it is allowed under the REMIC rules.

Partial Releases: The Delegated Transaction Forms 4636.C and 4636.PR for condemnations and partial releases respectively, have been updated so that a collateral change would be non-delegated if the collateral change violates the 100% LTV test. Lenders should consider if the condemnation/partial release will cause the UPB for the Mortgage Loan to exceed 100% of the value of the real estate (100% LTV).

Loan Modifications: Requests related to Supplemental Mortgage Loans that would otherwise delegate corresponding modifications to the Senior Mortgage Loan that would contradict the Senior Mortgage Loan's MBS disclosures, or if the change introduces any element that would have required Additional Disclosure at time of issuance or would otherwise have rendered the Senior Mortgage Loan REMIC ineligible are not permitted.

Any modification request made in conjunction with a Transfer/Assumption, whether considered on a delegated or non-delegated basis, that would contradict the at-issuance MBS disclosures or if the change introduces any element that would have required Additional Disclosure at the time of issuance or would otherwise have rendered the Mortgage Loan REMIC ineligible are not permitted.

Post Securitization/Asset Management Rules for MBS - Issued Prior to 1/1/21

Significant Modifications

Significant modifications can result from changes to the value in the underlying collateral or a change in payment expectations (e.g., the addition or release of collateral) not originally contemplated in the Loan documents. Generally, a collateral change that represents less than 10% of the total collateral value will not result in a significant modification. Any questions should be directed to your Asset Management representative. Under the tax laws for Fixed Investment Trusts (FIT), a change in the underlying collateral that results in a "significant modification" can result in a taxable event for the holder of a FIT MBS security. Collateral changes that result in a significant modification are not permitted for Mortgage Loans backing a FIT MBS.

Requests that Require Review:

- **Non-Recourse Carve Outs:** For a non-recourse loan, the addition of any new non-recourse carve-out
- **Collateral Addition or Release:** Addition or release of collateral, whether real property, cash, or letter of credit that is 10% or more of the total collateral value;
- **Lien Release:** Partial release of a Lien on real property collateral (not in connection with a condemnation and not contemplated in the Loan Documents for the Mortgage Loan);
- **Changes to Guaranty:** For a non-recourse Mortgage Loan, the addition of or expansion of a limited guaranty for completion of repairs or other identified Property issues (Note: Lenders must use Fannie Mae Form 6018 - Completion Guaranty);
- **Borrower Changes:** For a recourse Mortgage Loan, the addition or deletion of a co-obligor (without release of all original Borrowers);
- **Modifications related to Transfers/Assumptions:** Modification of permitted and non-permitted Transfers/Assumptions for a non-recourse Mortgage Loan; Fannie Mae review required unless delegated under the Guide or current published Form 4636.TA – Multifamily Asset Management Delegated Transaction: Transfer/Assumption; and
- **Loan Modifications:** The addition of new covenants or other modifications (not otherwise addressed in this Guidance document) to Loan Documents upon a Transfer/Assumption or for asset management requests, unless permitted by Part V of the Guide.

Loan or collateral changes that are **not** allowed:

- Addition of a new Borrower event of default;
- For a non-recourse Mortgage Loan, the addition of a new non-recourse carve-out with a resulting in full personal liability for the Mortgage Loan recourse trigger (Note: A new non-recourse carve-out that results in personal liability based on the Lender's loss would be permitted);
- Changing a non-recourse Mortgage Loan to recourse, or a recourse Mortgage Loan to non-recourse;
- For a recourse Mortgage Loan, any Transfer/Assumption, or any release of the original Borrowers and other obligors;
- Modification of original affordability restrictions for an MAH Property, or the conversion of the Property from Conventional to Affordable;
- Cross-default and/or cross-collateralization with a new Mortgage Loan (other than a Supplemental Mortgage Loan), or release of existing cross provisions (without prior Additional Disclosure); and/or
- Addition of a new due-on-sale clause.

Additional Resources

- [Additional Disclosure Guidance \(Form 4098\)](#);
- [Affordable Housing Data Guidance](#);
- [Data Guidance for Cross Defaulted and Cross Collateralized Mortgage Loans Job Aid](#);
- [Multifamily Required Trade Information \(Form 4097\)](#); and
- Contact your Fannie Mae Deal Team or Asset Manager with transaction-specific questions and requests.