

# Borrower Structure: Legal Entity Requirements

## Entity Types

If the borrower entity is ...

... a single-member LLC:

	Loan Amount		
	<\$5MM	\$5MM to \$25MM	>\$25MM
Is this entity type acceptable?	Yes	Yes	Yes
In what state may it be formed?	Any	Delaware	Delaware
Is an SPE Equity Owner required?	No	No	No
May the member be an individual?	Yes <sup>1</sup>	Yes	Yes
Is a “springing member” required?	Yes <sup>1,2</sup>	Yes <sup>2,3</sup>	Yes <sup>2,3</sup>

... a corporation:

	Loan Amount		
	<\$5MM	\$5MM to \$25MM	>\$25MM
Is this entity type acceptable?	Yes	Yes	Yes
In what state may it be formed?	Any	Any	Any
Is an SPE Equity Owner required?	No	No	No
May a shareholder be an individual?	Yes	Yes	Yes
Is a “springing member” required?	Not applicable	Not applicable	Not applicable

<sup>1</sup> The organizational documents for non-Delaware single-member LLCs (which are permitted only for loan amounts less than \$5 million) must contain any necessary provisions under the laws of the jurisdiction of formation to prevent the dissolution of the entity. Seller’s counsel must revise the form of single member LLC opinions appropriately, subject to the approval of the Freddie Mac regional attorney.

<sup>2</sup> The springing member must consist of either one entity or two individuals. A nationally recognized third-party corporation providing springing member services may be employed.

<sup>3</sup> The organizational documents for Delaware single-member LLCs must contain any necessary anti-dissolution provisions to permit the delivery of the Delaware single-member LLC opinions.

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## Borrower Structure: Legal Entity Requirements (cont'd)

### ... a multiple-member LLC:

	Loan Amount		
	<\$5MM	\$5MM to \$25MM	>\$25MM
Is this entity type acceptable?	Yes	Yes	Yes
In what state may it be formed?	Any	Any	Any
Is an SPE Equity Owner required?	No	No	Yes
May a member be an individual?	Yes	Yes	Yes <sup>4</sup>
Is a "springing member" required?	No	No	No

### ... a limited partnership:

	Loan Amount		
	<\$5MM	\$5MM to \$25MM	>\$25MM
Is this entity type acceptable?	Yes	Yes	Yes
In what state may it be formed?	Any	Any	Any
Is an SPE Equity Owner required?	No	No	Yes
May a partner be an individual?	Yes	Yes	Only limited <sup>5</sup>
Is a "springing member" required?	Not applicable	Not applicable	Not applicable

### ... a general partnership:

	Loan Amount		
	<\$5MM	\$5MM to \$25MM	>\$25MM
Is this entity type acceptable?	Yes	No	No
In what state may it be formed?	Any	Not applicable	Not applicable
Is an SPE Equity Owner required?	No	Not applicable	Not applicable
May a partner be an individual?	No <sup>6</sup>	Not applicable	Not applicable
Is a "springing member" required?	Not applicable	Not applicable	Not applicable

<sup>4</sup> At least one managing member of multiple-member LLC borrowers for loans of \$25 million or more must (a) be an SPE Equity Owner, and (b) own at least 0.5% of the borrower entity.

<sup>5</sup> All general partners of limited partnership borrowers for loans of \$25 million or more must be SPE Equity Owners.

<sup>6</sup> All partners of general partnership borrower entities (which are permitted only for loans below \$5 million) must be entities that would themselves be acceptable non-general partnership borrower entities, and may not be individuals.

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## Borrower Structure: Legal Entity Requirements (cont'd)

### *Special Purpose Entity (SPE) Equity Owners*

SPE Equity Owners are required when both:

- the loan amount is \$25 million or more, and
- the borrower entity is not a corporation or a Delaware single-member LLC.

SPE Equity Owners must:

- either be corporations or Delaware single-member LLCs, and
- comply with the corporate and single-member LLC entity requirements applicable to borrower entities.

### *Single Asset Entities*

Single asset entities are only permitted on loans under \$5 million.

### *Recycled SPE Borrower Entities*

Recycled SPE borrower entities are only permitted on loans under \$100 million.

### *Independent Directors or Managers*

Independent directors or managers, as applicable:

- may be required on some loans of \$50 million or more, and if required,
  - must be in place at the SPE Equity Owner level if a SPE Equity Owner is required, or
  - must be in place at the borrower entity level if the borrower entity is a corporation or a Delaware single-member LLC (and therefore no SPE Equity Owner is required).

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