

# Bulletin

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NUMBER: 2011-5

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TO: Freddie Mac Servicers

March 23, 2011

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## SUBJECTS

With this *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin, we are making the following changes to our **Servicing requirements**:

- Permitting Servicers to postpone foreclosure sales handled by designated counsel as long as the newly scheduled foreclosure sale date is within Freddie Mac’s State foreclosure time lines
- Eliminating the option to foreclose in the name of Mortgage Electronic Registration Systems Inc. (MERS)
- Revising our requirements relating to foreclosure and bankruptcy referrals to:
  - Provide additional details about Servicer’s Servicing obligations and expressly prohibit Servicers from charging Freddie Mac, trustees or attorneys for Servicing obligations compensated by the Servicing Spread
  - Add a requirement that prohibits Servicers from contracting, or making arrangements, with attorneys or trustees whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives any financial or other benefits, directly or indirectly, from the attorneys or trustees
  - Add a requirement that prohibits Servicers from requiring attorneys or trustees to use specified vendors, services or products, except for connectivity and invoice processing systems used by the Servicer
  - Prohibit Servicers from allowing service providers, vendors, outsourcing companies, or others to participate in, or influence, the selection of foreclosure counsel and trustees
  - Add new remedies that Freddie Mac may exercise, in its sole discretion, if a Servicer fails to comply with any of the new requirements relating to foreclosure and bankruptcy referrals
- Announcing that we will reimburse Servicers for limited connectivity and invoice processing fees and introducing new expense codes to facilitate the reimbursement of these new reimbursable expenses
- Revising our property preservation requirements by:
  - Introducing a new requirement to obtain an interior property inspection once a property has been determined to be abandoned, and again within 30 days prior to a scheduled foreclosure sale
  - Creating several new expense codes and increasing the expense limits for certain existing expense codes
- Announcing updated requirements for Servicer interaction with state Housing Finance Agencies (“HFAs”) regarding unemployment mortgage assistance, subsidy and/or mortgage reinstatement programs

- Revising Form 1132, *Authorization for Automatic Transfer of Funds Through the Automated Clearing House (ACH)*, to be a fillable form

In addition, we are reminding Servicers that:

- Freddie Mac updates Guide Exhibit 79, *Designated Counsel/Trustee*, to add or remove attorneys from time to time. Servicers are responsible for periodically checking to ensure that they are utilizing the most current version of Exhibit 79.
- Servicers are required to take appropriate steps to ensure that they receive notification of Bulletin publications

### **Effective dates**

All of the changes announced in this Bulletin are effective immediately, unless otherwise noted.

## **FORECLOSURE SALE POSTPONEMENTS**

In an effort to streamline processes, we have updated the Guide to permit Servicers to postpone foreclosure sales handled by Freddie Mac's designated counsel as long as the newly scheduled foreclosure sale date is within Freddie Mac's State foreclosure time lines specified in Exhibit 83, *Freddie Mac State Foreclosure Time Lines – In Calendar Days*. If, however, the foreclosure sale postponement would result in the Servicer exceeding Freddie Mac's foreclosure time lines, then the Servicer must obtain Freddie Mac's prior written approval to postpone the foreclosure sale. As a result of this change, Servicers will handle foreclosure sale postponements in the same manner, regardless of whether the foreclosure is being handled by designated counsel.

In addition, we have updated the Guide to specify the information we require to evaluate a request to postpone a foreclosure sale.

Guide Section 66.32, *Delays in Completing a Foreclosure*, has been revised to reflect this change.

## **CONDUCTING A FORECLOSURE ON A MORTGAGE REGISTERED WITH MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. (MERS)**

We have updated the Guide to eliminate the option for the foreclosure counsel or trustee to conduct a foreclosure in the name of MERS. Effective for Mortgages registered with MERS that are referred to foreclosure on or after **April 1, 2011**, Servicers must prepare an assignment of the Security Instrument from MERS to the Servicer and instruct the foreclosure counsel or trustee to foreclose in the Servicer's name and take title in Freddie Mac's name.

As required in Section 66.17, *Foreclosing in the Servicer's Name*, Servicers must record the prepared assignment where required by State law. State mandated recording fees are not reimbursable by Freddie Mac, are not considered part of the Freddie Mac allowable attorney fees and must not be billed to the Borrower.

Servicers should refer to updated Section 66.17 and Section 66.54, *Vesting the Title and Avoiding Transfer Taxes*, for additional information.

## **REVISED REQUIREMENTS RELATING TO FORECLOSURE AND BANKRUPTCY ACTIVITIES**

### **Servicer's Servicing obligations**

We have updated the Guide to provide additional details about foreclosure- and bankruptcy- related activities that are part of the Servicer's Servicing obligations and compensated through the Servicing Spread. We have also added a provision expressly prohibiting Servicers from charging Freddie Mac, trustees or attorneys for Servicing obligations compensated by the Servicing Spread.

Guide Chapter 54, *Servicing Compensation*, has been revised to reflect these changes.

## **Prohibitions relating to foreclosure and bankruptcy referrals**

Freddie Mac requires that all foreclosure- and bankruptcy- related Servicing obligations be performed in the most effective, efficient and cost-conscious manner in order to preserve Borrower and Freddie Mac interests. Therefore, Freddie Mac has added new Guide Section 54.5, *Prohibitions Relating to Foreclosure and Bankruptcy Referrals; Freddie Mac Remedies for Non-Compliance*, specifically prohibiting Servicers from contracting, or making arrangements, with attorneys or trustees whereby the Servicer (or its affiliate, service provider, vendor or outsourcing company) receives any financial or other benefits, directly or indirectly, from the attorneys or trustees.

This new Guide Section also prohibits Servicers from requiring attorneys or trustees to use specified vendors, services and/or products. However, a Servicer may require an attorney or trustee to use certain connectivity or invoice processing systems, provided that the attorney or trustee is not required to pay for the use of, or access to, such system.

Servicers are also expressly prohibited from allowing service providers, vendors, outsourcing companies, or others to participate in, or influence, the selection of foreclosure counsel and trustees, as specified in the new Guide Section 54.5.

Freddie Mac, at its sole discretion, may exercise remedies for Servicer non-compliance with these new provisions, including, but not limited to, refusing to reimburse the Servicer for attorney and trustee fees or costs, and requiring the Servicer to reimburse the attorney, trustee or Freddie Mac for any prohibited payments or financial benefits received by the Servicer.

## **NEW REIMBURSABLE EXPENSES: CONNECTIVITY AND INVOICING**

We acknowledge that Servicers use various systems in managing their default Servicing operations. To help the Servicer more effectively service Freddie Mac Mortgages, Freddie Mac will reimburse Servicers for limited expenses incurred for their attorneys' and trustees' use of connectivity and/or invoice processing systems.

Effective for all new foreclosure or bankruptcy referrals on or after **April 1, 2011**, Freddie Mac will reimburse Servicers for connectivity and invoice processing for the life of default (i.e., the duration of the foreclosure, including any related bankruptcy referral) as follows:

- New expense code 015000 Connectivity Fee – A maximum of \$25 for a new foreclosure or bankruptcy referral for charges associated with an attorney or trustee accessing the Servicer's systems
- New expense code 016000 Invoicing Fee – A maximum of \$5 for invoicing charges related to a foreclosure referral and an additional maximum of \$5 for invoicing charges related to an associated bankruptcy referral

However, Servicers are reminded of the following:

- The vendor must bill these charges directly to the Servicer, rather than the attorney or trustee, and the Servicer must pay the vendor directly for these charges
- No charges for connectivity or invoice processing may be passed on to the Borrower, the attorney or the trustee

Section 66.25, *Providing Information to the Foreclosure Counsel or Trustee; Servicer's System Connectivity and Invoice Processing*, Section 71.19, *Reimbursement of Fees and Costs Incurred during Legal Proceedings*, Exhibit 57, *1- to 4- Unit Property Approved Expense Amounts*, and Exhibit 74, *Expense and Income Codes for Expense Reimbursement Claims*, have been revised to reflect these changes.

## **PROPERTY PRESERVATION – PROPERTY INSPECTIONS AND NEW REIMBURSABLE EXPENSES**

We have revised our property preservation requirements and reimbursable expense limits for abandoned properties to allow Servicers to complete additional preservation activities without our prior approval, and to encourage proactive preservation and maintenance of abandoned properties. Specifically, we have updated the Guide to:

- Require that on or after **June 1, 2011**, the Servicer perform an interior property inspection on an abandoned property:
  - Upon confirmation that the property has been abandoned; and
  - Within 30 days prior to a scheduled foreclosure sale

Interior property inspections are reimbursable up to a maximum amount of \$20 for each inspection (\$40 maximum aggregate amount per property).

Although the new interior property inspection requirements are not effective until **June 1, 2011**, Servicers are strongly encouraged to begin implementing these changes as soon as possible. The new expense code for the reimbursement of interior property inspections is available immediately.

- Increase the reimbursable amount for exterior property inspections from a maximum aggregate amount of \$16 for all required inspections to a maximum amount of \$10 for each required exterior property inspection, provided that such inspections are completed within the State foreclosure time lines listed in Exhibit 83. The maximum number of reimbursable exterior property inspections will be limited to the total number of monthly property inspections that can be completed within the State foreclosure time lines set forth in Exhibit 83, regardless of any exception Freddie Mac provides to exceed the State foreclosure time lines.
- Increase the approved expense limits for certain property preservation expenses
- Provide new expense codes and associated expense limits for additional reimbursable property preservation expenses on abandoned properties, including fence repairs, emergency repairs and pre-foreclosure vacant property registration

The newly increased expense limits for property preservation and property inspection, as well as the new expense codes, are effective immediately.

Chapter 52, *Mortgage File Retention*, Chapter 64, *Delinquencies*, Chapter 65, *Loss Mitigation*, Chapter 67, *Adverse Matters*, Chapter 71, *Reimbursement of Expenses – Reimbursement System*, Chapter A71, *Reimbursement of Expenses – Online Reimbursement System*, Exhibit 57 and Exhibit 74 have been revised to reflect these changes.

## **UPDATES TO REQUIREMENTS FOR SERVICER INTERACTION WITH STATE HOUSING FINANCE AGENCIES’ (“HFAS”) MORTGAGE ASSISTANCE PROGRAMS**

In Bulletin 2010-25, we provided requirements for Servicer interaction with HFAs that provide mortgage assistance to Borrowers through unemployment mortgage assistance, subsidy and/or mortgage reinstatement programs.

With this Bulletin, we are:

- Announcing a revision to documentation requirements
- Providing further guidance on solicitation of Borrowers for participation in HFA mortgage assistance programs
- Revising the timing requirements for Servicer notification of payment changes to HFAs
- Providing a reminder about reporting monthly activity on Mortgages that receive financial assistance through the Innovation Fund for the Hardest Hit Housing Markets or Hardest Hit Fund (“HHF”)

- Reminding Servicers that Freddie Mac may, in its sole discretion, revise requirements relating to Servicer participation in HHF programs

### **Documentation requirements**

We have eliminated the requirement for Servicers to obtain from the HFA a copy of any approval letter, note and mortgage or other agreement describing the terms of financial assistance provided to the Borrower. Additionally, Servicers are no longer required to confirm whether the funds provided by the HFA on behalf of the Borrower are in the form of a loan or restricted grant, and whether such loan or grant requires monthly or periodic payments prior to refinance of the Mortgage or sale of the property.

### **Borrower solicitation**

We are clarifying that while generally a Servicer must not directly solicit Borrowers for participation in any HHF mortgage assistance program, the Servicer may do so if the Servicer receives express written consent to perform such solicitation from the HFA.

### **Servicer notifications to HFA**

Bulletin 2010-25 announced that Servicers must notify the HFA of any changes or adjustments to the Borrower's monthly payment amount at least 45 calendar days prior to the change, if the Borrower is receiving assistance under an unemployment mortgage assistance program. We are revising that requirement to provide that alternatively, the Servicer may notify the HFA of such payment changes in accordance with a time frame that is agreed upon in writing between the HFA and the Servicer, as applicable.

### **Reporting to Freddie Mac**

As previously communicated in our Single-Family Advisory e-mail on January 13, 2011, Servicers were required to begin reporting to us by February 1, 2011 on Mortgages receiving assistance under the HHF through the updated *Spreadsheet for Hardest Hit Fund Mortgages* that is located on [http://www.freddiemac.com/singlefamily/service/hfa\\_relief.html](http://www.freddiemac.com/singlefamily/service/hfa_relief.html). The updated spreadsheet provides additional instructions on how and when to use the spreadsheet, including the required format in which the spreadsheet must be submitted.

### **Reminder – reservation of rights**

Servicers are reminded that Freddie Mac has the right, in its sole discretion, to add or modify requirements in connection with Freddie Mac Mortgages and Servicer participation in HHF programs.

### **CHARGE-OFF RECONCILIATION**

Previously, Freddie Mac provided a charge-off form that detailed the amount that Freddie Mac has determined would be charged off in connection with a short payoff, charge-off or third-party sale. As this information is also provided on the Detail Adjustment Report (DAR), we have updated the Guide to direct Servicers to review their DAR for this information. **Effective immediately**, Servicers must report any discrepancies between the DAR and their records to Freddie Mac by submitting new Guide Form 1205, *Charge-off Reconciliation*, within 30 calendar days following Freddie Mac's posting of the amount to the DAR.

Chapter B65, *Workout Options*, Chapter 66, *Foreclosure*, and Directory 5 have been revised to reflect these changes.

## **UPDATES TO FORM 1132, AUTHORIZATION FOR AUTOMATIC TRANSFER OF FUNDS THROUGH THE AUTOMATED CLEARING HOUSE (ACH)**

Form 1132 has been revised to be a fillable form for Seller/Servicer convenience. We are also updating the form to remind Seller/Servicers to verify the bank routing and transit number (Part C). There is no need to complete a new form unless ACH instructions change.

## **REMINDER – NOTIFICATION OF GUIDE BULLETIN PUBLICATION FOR SERVICERS**

In a Single-Family Advisory e-mail dated February 1, 2011, we announced the launch of Freddie Mac's new Single-Family Business News Subscription Center to improve the way Servicers receive important news and information about our single-family selling and Servicing business. Beginning in **April 2011**, Servicers will start receiving e-mails based on their subscription choices. Unless a Servicer has subscribed through our online subscription center, the Servicer will no longer receive general Freddie Mac e-mail communications, including notices of Guide updates.

The Single-Family Business News Subscription Center can be found at:

[www.freddiemac.com/singlefamily/news/subscribe](http://www.freddiemac.com/singlefamily/news/subscribe).

As announced in Bulletin 2011-4, we have updated Sections 1.2 and 50.2, *Legal Effect of the Single-Family Seller/Servicer Guide*, to remind Servicers that they are required to take appropriate steps to ensure that they receive notification of Bulletin publications. While Servicers with AllRegs® subscriptions may receive notification of Bulletin publications directly from AllRegs, all other Servicers must take steps to ensure that they subscribe to the appropriate Single-Family Update e-mails, which will notify them of Bulletin publications.

A Servicer's failure to take the appropriate steps to receive notices of Bulletins will not relieve the Servicer of its legal obligations to comply with the terms of the Bulletins.

## **REVISIONS TO THE GUIDE**

The revisions included in this Bulletin impact the following:

- Chapters 52, 54, 64, 65, B65, 66, 67, 71 and A71
- Forms 1132 and 1205
- Exhibits 57 and 74
- Directory 5

## **CONCLUSION**

If you have any questions about the changes announced in this Bulletin, please contact your Freddie Mac representative or call (800) FREDDIE and select Servicing.

Sincerely,



Tracy Mooney  
Senior Vice President  
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