

Bulletin

NUMBER: 2012-25

TO: Freddie Mac Servicers

November 9, 2012

SUBJECT: SERVICER SELECTION, RETENTION AND MANAGEMENT OF LAW FIRMS

With this *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin, we are announcing new requirements with respect to the management of law firms for bankruptcies and default-related legal matters, which include foreclosures, loss mitigation (e.g., deed-in-lieu of foreclosure) and related litigation involving Freddie Mac-owned or guaranteed Mortgages (“Freddie Mac Default Legal Matters”). These requirements are being initiated jointly with Fannie Mae at the direction of our regulator, the Federal Housing Finance Agency (FHFA).

EFFECTIVE DATE

All changes announced in this Bulletin are effective on **June 1, 2013** unless otherwise noted.

Effective June 1, 2013, all new referrals for Freddie Mac Default Legal Matters must be sent to law firms that Servicers have selected and engaged under the requirements in new Guide Chapter 69, *Selection, Retention and Management of Law Firms for Freddie Mac Default Legal Matters*. Servicers may no longer send foreclosure referrals directly to trustees.

All existing requirements related to the retention of law firms or use of designated counsel remain in effect for all referrals of Freddie Mac Default Legal Matters sent to such law firms or trustees prior to June 1, 2013 (“Legacy Matters”). Servicers may reference these requirements in new Chapter A69, *Retention of Counsel for Freddie Mac Default Legal Matters Prior to June 1, 2013*.

However, Servicers may at their own expense elect to transfer Legacy Matters to law firms selected and retained under the new requirements set forth in Chapter 69 provided that Servicers:

- Provide Freddie Mac with five Business Days’ prior written notice of such transfers via e-mail to legal_servicersselection@freddiemac.com; and
- Assume responsibility for any errors, omissions or delays by the transferee firm

In addition, Freddie Mac Default Legal Matters referred to law firms prior to June 1, 2013 may remain with such law firms. If a Servicer elects to leave Legacy Matters at a law firm that it does not select and engage pursuant to this Bulletin and Chapter 69, then on or after June 1, 2013, the Servicer must comply with the requirements of Chapter 69 related to monitoring and management of the law firm, reporting, escalation of issues and termination and suspension of law firms. The Servicer will not be required to ensure that law firms selected in accordance with Guide requirements in effect prior to June 1, 2013 comply with the “Firm Minimum Requirements” in Guide Section 69.3, *Firm Minimum Requirements*, new firm training requirements in Section 69.6, *Training of Firms*, or Freddie Mac's limited retention agreement with the law firm.

All referrals of Freddie Mac Default Legal Matters to law firms on or after June 1, 2013 will be governed by the new requirements for law firm selection and engagement. Servicers must be proactive in selecting and engaging law firms in all States in which the Servicer has, or anticipates having, delinquent Freddie Mac-owned or guaranteed Mortgages prior to June 1, 2013, to be in a position to begin making new referrals on that date. To facilitate an orderly and timely selection and engagement process, Servicers may submit law firm selections to Freddie Mac for review as early as March 1, 2013.

Except with respect to Legacy Matters, law firms that are currently part of Freddie Mac's designated counsel program are not exempt from the new selection and engagement process in Chapter 69. If a Servicer intends to refer new Freddie Mac Default Legal Matters to an existing designated counsel firm on or after June 1, 2013, the Servicer must select and engage the law firm in accordance with the process set forth in Chapter 69.

NEW REQUIREMENTS IN CHAPTER 69

Chapter 69 incorporates new requirements related to the management of Freddie Mac Default Legal Matters that address the three main stages of law firm interaction, including:

- Engagement
 - Firm Minimum Requirements specified in Section 69.3
 - Firm selection and contract
 - New firm training
- Management and oversight
 - Diversification of referrals
 - Performance and compliance monitoring
 - Ongoing training
 - Reporting
 - Escalations
- Termination and suspension
 - Determining whether to terminate a law firm or suspend referrals
 - Implementing a termination of a law firm or suspension of referrals and transfer of files

Servicers should review Chapter 69 in its entirety to familiarize themselves with all new requirements related to the selection, retention and management of a law firm for Freddie Mac Default Legal Matters.

Engagement

Law firm selection and retention

With respect to referral of Freddie Mac Default Legal Matters on or after June 1, 2013, all law firms selected and retained by the Servicer to handle Freddie Mac Default Legal Matters must meet the Firm Minimum Requirements. If the Servicer determines that a particular law firm meets the Firm Minimum Requirements, then the Servicer must complete Guide Exhibit 99, *Servicer Selection Form*, and submit the exhibit to Freddie Mac for review. Freddie Mac will respond to the Servicer with a "no objection" or "objection" determination, or ask for additional information about the law firm. Freddie Mac expects to be able to respond to the Servicer within 15 Business Days after receipt of a submitted Exhibit 99, but additional time may be required, particularly during the months preceding and immediately after June 1, 2013.

On or after March 1, 2013, Servicers may begin sending Exhibit 99 to Freddie Mac for review and response. Freddie Mac will communicate additional details with respect to the submission of Exhibit 99 prior to March 1, 2013.

If Freddie Mac provides a “no objection” response to the Servicer’s submission of Exhibit 99, the Servicer must enter into a contract with the law firm (if a contract does not already exist) to handle Freddie Mac Default Legal Matters. In addition, Freddie Mac will enter into a limited retention agreement with the law firm that sets forth certain key retention provisions with the law firm for each State in which the law firm has received a “no objection” determination.

The limited retention agreement will recognize a joint attorney-client relationship between the law firm, Freddie Mac and the Servicer. In the event of any inconsistency or conflict between the terms and conditions of the Servicer’s contract with the law firm and the terms and conditions of Freddie Mac’s limited retention agreement with the law firm, Freddie Mac’s limited retention agreement shall control. Freddie Mac will communicate to Servicers in the near future instructions on accessing a template of the limited retention agreement for each State.

Refer to Section 69.4, *Selection of Firm*, and Section 69.5, *Retention of Firm*, for additional requirements related to the selection and retention of the law firm.

Law firm training

Law firms selected to receive referrals made on or after June 1, 2013, must attend Freddie Mac’s new firm training before Freddie Mac will enter into a limited retention agreement with the law firm.

Freddie Mac’s new firm training will be available beginning **April 15, 2013**, and will address law firm reporting requirements and issues specific to the representation of Freddie Mac relating to the handling of Freddie Mac Default Legal Matters and non-routine litigation. Additional information related to new firm training will be available early in 2013.

On or after June 1, 2013, the Servicer may only refer Freddie Mac Default Legal Matters to a law firm once the Servicer has verified that the law firm has completed Freddie Mac’s new firm training and that the law firm has executed a limited retention agreement with Freddie Mac.

Law firms only have to attend Freddie Mac’s new firm training and enter into a limited retention agreement with Freddie Mac once, regardless of the number of Servicers that select and engage the law firm.

Refer to Section 69.6 for additional requirements related to law firm training.

Management

The Servicer is responsible for managing and monitoring all aspects of law firm performance, providing necessary assistance to the law firm relating to Freddie Mac Default Legal Matters and undertaking all activities required to protect Freddie Mac’s interest in the Mortgage.

Diversification of referrals

The Servicer must diversify its referrals of Freddie Mac Default Legal Matters to an appropriate number of law firms to protect the interests of Freddie Mac and to mitigate the risks related to a high concentration of Freddie Mac files. In selecting law firms for referrals, the Servicer must consider at a minimum, law firm capacity and management of staff-to-file ratios.

Refer to Section 69.7, *Referral of Freddie Mac Default Legal Matters to Firm*, for additional requirements related to the referral of Freddie Mac Default Legal Matters.

Performance and compliance monitoring

The Servicer must establish compliance processes, policies and procedures to monitor the performance of each law firm and ensure that each law firm complies with applicable Freddie Mac requirements.

Freddie Mac will review each Servicer's compliance processes periodically and may require the Servicer to conduct additional compliance activities related to each law firm, such as additional audits, reviews or law firm assessments or to change the scope of the compliance activities relating to Freddie Mac Default Legal Matters or a particular law firm.

Refer to Section 69.11, *Servicer Monitoring and Management of Firm*, for additional requirements related to compliance monitoring.

Required reporting

Upon request, the Servicer must provide to Freddie Mac reports related to law firm performance, management of foreclosure and bankruptcy processes, oversight of law firm compliance and other related matters as required by Freddie Mac. All law firms will be required to report data directly to Freddie Mac.

Additional requirements with respect to the data and reports the Servicer and law firm must provide to Freddie Mac will be communicated in a future Bulletin.

Escalations

If the Servicer becomes aware of any issues or concerns (e.g. non-routine litigation, fraud, criminal investigations, etc.) relating to Freddie Mac Default Legal Matters or a law firm, the Servicer must notify Freddie Mac within two Business Days, or sooner if circumstances warrant.

The Servicer must designate specific points of contact responsible for communicating such matters to Freddie Mac, requesting additional information from a law firm, providing further information to Freddie Mac, and taking such other steps as requested by Freddie Mac. The Servicer also must ensure that each law firm retained has identification and escalation procedures instituted to notify the Servicer and Freddie Mac of the occurrence of any issues or concerns.

Refer to Section 69.12, *Escalation of Issues to Freddie Mac*, for additional requirements related to escalation of issues to Freddie Mac.

Termination and suspension

If the Servicer becomes aware of information regarding a law firm that might warrant termination of the law firm, suspension of referrals to such law firm, or transfer of current files from such law firm, the Servicer must conduct a due diligence review to determine if the law firm is no longer eligible to handle Freddie Mac Default Legal Matters.

After completing the due diligence review, if the Servicer decides to terminate the law firm from handling Freddie Mac Default Legal Matters, suspend referrals to the law firm, and/or transfer files from the law firm, the Servicer must notify Freddie Mac at least five Business Days prior to implementing the decision, or sooner if circumstances warrant.

For additional requirements related to termination and suspension of law firms, refer to Section 69.13, *Termination and Suspension of Firms*, and 69.14, *Implementing the Termination and Suspension of Firms*.

Additional Servicing requirements

Routine and non-routine litigation – Effective immediately

We have updated Section 67.17, *Non-Routine Default-Related Legal Matters*, to further distinguish litigation that is routine versus non-routine, and provide additional guidance with respect to non-routine litigation based on the following categories:

1. Actions where Freddie Mac is a named party;
2. Actions that seek monetary relief against Freddie Mac such as any claim (including counterclaims, cross-claims or third party claims in foreclosure or bankruptcy actions) for damages against Freddie Mac or its officers, directors or employees;
3. Actions that challenge the validity, priority or enforceability of a Freddie Mac-owned or guaranteed Mortgage or seek to impair Freddie Mac's interest in a Real Estate Owned (REO); and
4. Actions that present an issue that may pose significant legal or reputational risk to Freddie Mac

We have also relocated Servicer reporting and notification requirements related to routine and non-routine litigation to Section 67.18, *Reporting and Notification Requirements for Freddie Mac Default-Related Legal Matters*.

Servicers must continue to notify Freddie Mac of any non-routine litigation and report both routine and non-routine matters involving Mortgages that are 30 or more days delinquent via Electronic Default Reporting (EDR) in accordance with Section 67.18.

Use of counsel for Mortgages subject to indemnification

Counsel retained and paid by Servicers pursuant to their indemnification or full recourse obligations to Freddie Mac need not be selected and engaged pursuant to the law firm selection and retention requirements in Chapter 69.

Refer to Section 67.19, *Counsel Retained by Servicers Pursuant to Servicer's Duty to Indemnify Freddie Mac*, for additional requirements related to counsel selected pursuant to a Servicer's indemnification obligations to Freddie Mac.

Foreclosure sale bidding

Effective June 1, 2013, designated counsel will no longer obtain a valuation from Freddie Mac through BPOdirect[®] if designated counsel was used to process the foreclosure on Legacy Matters. Further, designated counsel will no longer determine the beginning bid and final bid at a foreclosure sale.

For all foreclosure referrals, including Legacy Matters, Servicers must obtain a valuation from Freddie Mac through BPOdirect in accordance with Section 66.39, *When to Obtain a Valuation for Foreclosure Sale Bidding*, and set the foreclosure bid amount in accordance with the requirements of Sections 66.42, *Delegated Bidding*, and 66.43, *First Lien Mortgages Not Covered by Mortgage Insurance*.

Allowable attorney fees

Exhibit 57A, *Approved Attorney Fees and Title Expenses*, currently sets forth the maximum allowable amounts Freddie Mac will reimburse Servicers for attorney fees related to foreclosure and bankruptcy that are not submitted via a 104DC claim. Freddie Mac is reviewing the allowable limits for these expenses, and will communicate any revisions to allowable amounts and/or changes to the reimbursement process in a future Bulletin.

Until notified otherwise by Freddie Mac, Servicers must continue to follow Guide requirements related to the reimbursement of attorney fees, including the allowable amounts for reimbursement as set forth in Exhibit 57A.

As a reminder, Servicers must ensure that attorney fees and costs incurred are reasonable and customary for the area in which the property is located. If amounts exceed current expense limits in Exhibit 57A, Servicers must continue to request Freddie Mac's approval prior to incurring the expense.

For Freddie Mac Default Legal Matters referred to designated counsel prior to June 1, 2013, Servicers must continue to pay designated counsel for the fees they submit on the 104DC claim and Freddie Mac will reimburse the Servicer for those amounts submitted on the 104DC claim.

SERVICER TRAINING

Training will be available beginning November 19, 2012 to help Servicers further understand the new requirements related to the selection, retention and management of law firms for Freddie Mac Default Legal Matters. We strongly encourage enrollment in our new webinar at

http://www.freddiemac.com/ontrack/html/LearningCenter/ClassDescription.jsp?crsNum=SAI_SS_MLF.

Servicers should visit our Learning Center web page at <http://www.freddiemac.com/learn/service/> for additional Servicing training information and training resources.

REVISIONS TO THE GUIDE

The revisions included in this Bulletin impact the following:

- Chapters 1, 2, 18, 50, 53, 54, 64, 65, 66, 67, 69, A69 and 71
- Exhibit 99
- Directory
- Glossary

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 Hagen Mooney
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Single-Family Servicing and REO