



TO: Freddie Mac Sellers and Servicers

November 20, 2014 | 2014-21

SUBJECT: SELLING REPRESENTATION AND WARRANTY FRAMEWORK LIFE-OF-LOAN EXCLUSIONS

This *Single-Family Seller/Servicer Guide* (“Guide”) Bulletin announces, jointly with Fannie Mae and at the direction of the Federal Housing Finance Agency (FHFA), a number of significant enhancements to the selling representation and warranty framework (“the framework”), which was introduced in 2012 (“Version 1 of the framework”) and updated earlier this year (“Version 2 of the framework”). These changes relate to the framework’s life-of-loan representations and warranties for misstatements, misrepresentations, omissions and data inaccuracies.

In addition to the changes to the framework’s life-of-loan representations and warranties, we are also updating Guide Section 6.2, *Compliance with Applicable Law*, to provide Seller/Servicers with more certainty and transparency regarding when and how Freddie Mac will be able to enforce remedies for compliance with laws violations.

EFFECTIVE DATES

All changes to the framework’s life-of-loan representations and warranties are retroactively effective for Mortgages with Settlement Dates on and after January 1, 2013, except that such changes do not apply to any Mortgages for which Freddie Mac has issued a repurchase request prior to this Bulletin.

The changes to Section 6.2 are effective immediately and apply to Mortgages with Settlement Dates on and after November 20, 2014.

It is Freddie Mac’s expectation that any future modifications to the framework will apply prospectively.

EXCLUSIONS – LIFE-OF-LOAN SELLING REPRESENTATIONS AND WARRANTIES

Background

Under the framework, Seller/Servicers are relieved from Freddie Mac’s enforcement of certain selling representations and warranties related to the underwriting of the Borrower, the Mortgaged Premises, and the project in which the Mortgaged Premises is located for Mortgages that have achieved an acceptable payment history or a satisfactory conclusion of a Freddie Mac quality control review. These relieved representations and warranties are listed in the chart in Section 6.14(a), *Representations and Warranties*. As stated in Section 6.14(c), *Life-of-Loan Representations and Warranties*, Seller/Servicers are not relieved from Freddie Mac’s enforcement of its representations and warranties with respect to the following matters (“life-of-loan representations and warranties”), even if the issues are referenced in a Guide section relieved in Section 6.14(a):

- Charter matters
- Misstatements, misrepresentations and omissions
- Data inaccuracies
- Clear title/First Lien priority
- Compliance with laws
- Mortgage product eligibility

The representations and warranties in the Guide that are not listed in the chart in Section 6.14(a) (for example, pooling and delivery requirements) do not obtain relief under the framework.

We are updating Section 6.14, *Enforcement of Representations and Warranties Related to Underwriting of the Borrower, Mortgaged Premises and Project*, to provide Seller/Servicers with more certainty regarding when

Freddie Mac will enforce remedies, including repurchase, related to the life-of-loan exclusions for misstatements, misrepresentations, omissions and data inaccuracies. Updates include a new test to determine whether misrepresentations or data inaccuracies are significant.

This Bulletin also includes information related to post-relief date Mortgage file reviews and reminders related to Seller/Servicer's right to cure a defect and to appeal a repurchase request pursuant to the Guide.

Misstatements, misrepresentations and omissions

For Mortgages that have obtained relief under the framework, we are updating the life-of-loan representation and warranty for misstatements, misrepresentations and omissions as specified below.

The Mortgage must not have any misstatements, misrepresentations or omissions ("misrepresentations") by any party to the Mortgage transaction pertaining to the Borrower, Mortgaged Premises or project in which the Mortgaged Premises is located that are made with or without Seller's knowledge and that:

1. Involve three or more Mortgages sold to Freddie Mac by the same Seller, and
2. Were made pursuant to a common pattern of activity in connection with the Mortgage origination or sale, based on information in the Mortgage file or other facts or circumstances that existed on the Settlement Date, which involved at least one party common to all the Mortgages (if the common party is the Seller, then the same individual; if the common party is a third party, then the same individual or entity), and
3. Are "significant" in that, using true and accurate information, either (a) Freddie Mac determines that the Mortgage would not have been eligible for sale under the terms of the Seller's Purchase Documents in effect on the Settlement Date, or (b) Freddie Mac determines that the Mortgage would have been eligible for sale, but under different terms

We have also updated the language for misrepresentations to specify that:

- For purposes of finding three or more Mortgages to constitute the pattern, both Mortgages that have obtained relief under the framework and Mortgages that have not obtained relief may be counted. If Mortgages that have not obtained relief are counted for purposes of establishing a pattern, those Mortgages must meet all requirements of this exclusion (i.e., three or more Mortgages, common pattern of activity, significance) in order for Freddie Mac to enforce a remedy for each Mortgage.
- In determining whether a misrepresentation is significant, Freddie Mac will rely on its Loan Prospector[®] simulator, which approximates the Risk Class at the time of delivery. Freddie Mac will compare the Loan Prospector simulator assessment using true and accurate information with the Loan Prospector simulator assessment received at the time of delivery.

A misrepresentation will be considered significant only if the Mortgage receives a worse Loan Prospector assessment from the simulator than was received at the time of delivery to Freddie Mac, except that Freddie Mac will also take into account any applicable negotiated terms of business and the impact of any undisclosed concessions, concealed transaction terms or other violations of the Seller's Purchase Documents that are involved in the misrepresentation, but are not evaluated by the Loan Prospector simulator when determining significance. Freddie Mac will notify the Seller/Servicer of any such undisclosed matters or violations that are considered in connection with determining significance and will provide the Seller/Servicer with documentation supporting the significance determination.

- If Freddie Mac determines that the Mortgage would have been eligible for sale but under different terms than those under which the Mortgage was sold, as described in 3(b) above, Freddie Mac will not seek repurchase, but instead will re-price the Mortgage, consistent with the Seller's Purchase Documents in effect on the Settlement Date, to reflect the true risk profile of the Mortgage
- As an exception to the above, Mortgages involving fraud will be subject to repurchase, regardless of whether the above test (three or more Mortgages, common pattern of activity, significance) has been met. For purposes of this life-of-loan representation and warranty only, "fraud" is established either by (i) an adjudicated claim affirming fraud by or against the Seller or other party to the Mortgage transaction, or (ii) Freddie Mac finding clear and convincing evidence that a Seller or other party to the Mortgage transaction knowingly executed or participated in a scheme or artifice in connection with the underwriting, origination or sale of a Mortgage (1) to defraud Freddie Mac or any other party to the Mortgage transaction, or (2) to obtain

any moneys, funds, credits, assets, securities, or other properties from Freddie Mac or any other party to the Mortgage transaction by means of fraudulent pretenses, representations or promises.

Data inaccuracies

For Mortgages that have obtained relief under the framework, we are updating the life-of-loan representation and warranty for data inaccuracies as specified below.

The Mortgage must not have any Uniform Loan Delivery Dataset (ULDD) data inaccuracies pertaining to the underwriting of the Borrower, Mortgaged Premises or project in which the Mortgaged Premises is located, if and to the extent:

1. The data inaccuracies affect five or more Mortgages and involve the same delivery data element(s), and
2. The ULDD data differs from the information in the Mortgage file, and
3. The data inaccuracies are “significant” in that, using the information from the Mortgage file to qualify the Borrower, Mortgaged Premises and/or project in which the Mortgaged Premises is located, either (a) Freddie Mac determines that the Mortgage would not have been eligible for sale under the terms of Seller’s Purchase Documents in effect on the Settlement Date, or (b) Freddie Mac determines that the Mortgage would have been eligible for sale, but under different terms

We have also updated the language for data inaccuracies to specify that:

- For purposes of finding five or more Mortgages involving the same delivery data element inaccuracy, both Mortgages that have obtained relief under the framework and Mortgages that have not obtained relief may be counted. If Mortgages that have not obtained relief are counted for purposes of establishing that there were five or more Mortgages with the same delivery data element inaccuracy, those Mortgages must meet all other requirements of this exclusion (i.e., same delivery data elements, data differs from information in the Mortgage file, significance) in order for Freddie Mac to enforce a remedy for each Mortgage.
- In determining whether the data inaccuracy is significant, Freddie Mac will rely on its Loan Prospector simulator, which approximates the Risk Class at the time of delivery. Freddie Mac will compare the Loan Prospector simulator assessment using true and accurate information with the Loan Prospector simulator assessment received at the time of delivery.

A data inaccuracy will be considered significant only if the Mortgage receives a worse Loan Prospector assessment from the simulator than was received at the time of delivery to Freddie Mac, except that Freddie Mac will also take into account any applicable negotiated terms of business when determining significance. Freddie Mac will provide the Seller/Servicer with documentation supporting the significance determination.

- If Freddie Mac determines that the Mortgage would have been eligible for sale, but under different terms than those under which the Mortgage was sold, as described in 3(b) above, Freddie Mac will not seek repurchase, but instead will re-price the Mortgage consistent with the Seller’s Purchase Documents in effect on the Settlement Date to reflect the true risk profile of the Mortgage

Mortgage product eligibility/unacceptable Mortgage products

The Mortgage product eligibility life-of-loan representation and warranty will now be called unacceptable Mortgage products. Although the Seller must reference the Guide requirements in order to determine whether a Mortgage is acceptable for sale to Freddie Mac, Freddie Mac has listed examples of unacceptable Mortgage products in this life-of-loan exclusion to the framework. We have updated this non-exhaustive list in Section 6.14(c) to add more examples and to make clear what constitutes an unacceptable Mortgage product. Freddie Mac will not expand this list by adding features related to the underwriting of the Borrower, the Mortgaged Premises, or the project in which the Mortgaged Premises is located.

Post-relief date Mortgage file/appraisal reviews

Freddie Mac may perform Mortgage file reviews for quality assurance and audit purposes, both before and after the Mortgage obtains relief under the framework. However, Freddie Mac cannot issue a repurchase request or seek a remedy with respect to a deficiency in the underwriting of the Borrower, Mortgaged Premises, or project in which the Mortgaged Premises is located that is relieved under the framework (i.e., listed in the chart in

Section 6.14(a)) that is discovered after the Mortgage has obtained relief, except to the extent the deficiency involves one of the life-of-loan exclusions. For Mortgages that have obtained relief under the framework, if Freddie Mac reviews the appraisal in the Mortgage file after the relief date and determines that the property value used to calculate the loan-to-value (LTV) ratio was incorrect at the time of delivery, Freddie Mac will not issue a repurchase request based solely on the fact that the newly calculated LTV is over 80% and the Mortgage did not have a credit enhancement in place when it was delivered to Freddie Mac.

Reminders related to Seller/Servicer's right to cure and to appeal repurchase requests

As a reminder, Seller/Servicers may cure underwriting and origination defects that are capable of being cured consistent with the Guide. Once a Seller/Servicer has cured a Mortgage defect in the time and manner specified, Freddie Mac cannot enforce a remedy based on the breach of the cured defect.

Also, as a reminder, all repurchase requests issued for breaches of representations and warranties may be appealed by the Seller/Servicer under the appeals process described in Section 72.6, *Appealing a Repurchase Request Due to Violations of Sale Representations and Warranties*.

COMPLIANCE WITH LAWS

In addition to the above changes, Freddie Mac is updating Section 6.2, which requires Sellers to comply with all applicable federal, State and local laws, ordinances, regulations and orders. These changes are effective immediately and apply to all Mortgages with Settlement Dates on and after November 20, 2014, without regard to whether they have obtained relief under the framework.

Previously, under Section 6.2, Freddie Mac could enforce a remedy, including repurchase, for all Seller violations of applicable federal, State and local laws, ordinances, regulations and orders. To provide more transparency and certainty to Seller/Servicers, we are limiting those situations for which we may issue a repurchase request to violations of law that:

- Could be expected to impair Freddie Mac's or its Servicer's ability to enforce our Note or Mortgage, or
- Impose assignee liability, or
- Are found to have been violations of, or if Freddie Mac has made a finding based on the facts available to Freddie Mac that a violation may have occurred of, one or more of the following laws or related regulations:
 - Foreign assets control regulations, 31 C.F.R. Chapter V, as amended, and any authorizing legislation or executive order relating thereto, as administered by the Office of Foreign Assets Control (OFAC) within the United States Department of the Treasury (collectively "OFAC Regulations")
 - The Fair Housing Act
 - Anti-discrimination provisions of the Equal Credit Opportunity Act (ECOA)
 - Unfair, deceptive, or abusive acts or practices under federal and State laws (UDAAP)
 - The Securities Exchange Act of 1934

With respect to UDAAP, Freddie Mac will take into consideration published federal and State announcements of interpretations as well as all published judicial and administrative decisions and will not enforce a repurchase if the matter can be cured by remediation to the injured party and the Seller/Servicer makes such remediation. However, three or more years after the Settlement Date of a Mortgage, Freddie Mac may not seek repurchase on UDAAP grounds regarding a specific practice unless a lender self-reports or if a federal or State enforcement authority has indicated, asserted or claimed that such practice violates or may violate UDAAP, or a federal or State court has held that a specific practice violates UDAAP.

A repurchase demand based on a compliance with law violation will include supporting facts and findings made by Freddie Mac in the course of considering the facts and circumstances before it. Freddie Mac's determination that a violation has occurred must be consistent with the facts and circumstances provided by the Seller/Servicer and any other information obtained by Freddie Mac as part of its evaluation of the situation.

When Freddie Mac issues a repurchase request in connection with a failure to comply with laws and there is pending litigation underway involving that same issue or a government agency with authority to make a determination regarding the issue has publicly stated that it is reviewing the issue, the Seller/Servicer will not be

required to repurchase until 30 days after the litigation has been dismissed, settled or concluded at trial in an adjudication or the governmental agency has made a final determination, as applicable (collectively, “the Resolution”). After the Resolution, the Seller/Service may request that Freddie Mac review the appropriateness of the repurchase request in light of the Resolution. Freddie Mac will withdraw the repurchase request where appropriate.

As a reminder, the Seller/Service remains obligated to indemnify Freddie Mac for losses, judgments, damages, claims, costs, expenses, legal actions and legal fees related to any claim of non-compliance with laws or regulations.

As previously announced, Freddie Mac will not issue a repurchase request based on violations of the ability to repay provisions under the Truth-in-Lending Act (“ATR”) unless a court or regulator concludes the Mortgage did not comply with ATR.

TRAINING

Seller/Service should visit the [Freddie Mac Learning Center](#) and the [Freddie Mac Representation and Warranty web page](#) for additional reference information and tools in support of the framework.

CONCLUSION

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

Sincerely,



Laurie Redmond
Vice President
Offerings Effectiveness