Freddie Mac

Bulletin

**TO: Freddie Mac Servicers** December 16, 2015 | 2015-22

## SUBJECT: SERVICING UPDATES

This *Single-Family Seller/Servicer Guide* ("Guide") Bulletin announces:

**Servicing remedies framework**

- The servicing remedies framework – **January 1, 2016 (New)**

**Default management**

- Revisions to our Borrower contact and solicitation requirements – **June 1, 2016**
- Indefinite extension of the deed-in-lieu of foreclosure supplemental Borrower incentive payment of up to $7,000 that was announced in Bulletin 2014-19

**Subsequent Transfers of Servicing**

- Elimination of the $500 transfer processing fee for Subsequent Transfer of Servicing requests

**Freddie Mac contact information**

- Updates to certain Freddie Mac contact information

## EFFECTIVE DATE

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

## SERVICING REMEDIES FRAMEWORK – SERVICING DEFECTS AND REMEDIES

**Effective January 1, 2016**

Freddie Mac, jointly with Fannie Mae, at the direction of the Federal Housing Finance Agency (FHFA), is pleased to announce the servicing remedies framework, which expands upon provisions that were introduced in Bulletin 2012-20. The servicing remedies framework provides greater clarity on the process for categorizing loan-level Servicing Defects based on Servicing Violations, Servicer corrections of such defects and loan-level remedies for Servicing Violations. The servicing remedies framework does not affect any selling or contractual representations and warranties (e.g., fraud, compliance with applicable law, etc.).

In adopting and clarifying the servicing remedies framework, we are not discharging Servicers from responsibility for Servicing Mortgages in accordance with the terms of Freddie Mac's Purchase Documents, including the Guide.

We encourage Servicers to review **Freddie Mac's Servicing Remedies Framework – FAQ's** for illustrative examples describing how Freddie Mac may determine the appropriate Servicing Remedy and the calculation of such remedy.

### Definitions

In support of the servicing remedies framework, the following terms will be added to Guide Section 72.1.1:

- **Servicing Correction**: Action taken by the Servicer that demonstrates that the identified Servicing Defect either (i) did not, in fact, exist, or (ii) has been corrected in the time frame specified by Freddie Mac, such that the Servicing Defect is no longer considered by Freddie Mac to be a Servicing Defect

- **Servicer Counterparty Status**: Freddie Mac's assessment of a Seller/Servicer's financial capacity which could determine whether to offer the Seller/Servicer certain Servicing Repurchase Alternatives for a Servicing Violation
- **Servicing Defect**: A loan-level deficiency based on a Servicing Violation resulting from a breach of a requirement, term or condition contained in the Purchase Documents in effect at the time of the Servicing Violation
- **Servicing Remedy**: An action to resolve a Servicing Defect elected by Freddie Mac in accordance with the Purchase Documents which may be either a Servicing Repurchase Alternative or a repurchase
- **Servicing Repurchase Alternative**: Remedies other than repurchase of the identified Mortgage including, after foreclosure, the Real Estate Owned (REO) property that compensates Freddie Mac for damages, expenses and losses resulting from the identified Servicing Defect. The Servicing Repurchase Alternative offered by Freddie Mac will be based on the individual Servicing Defect, and Section 72.1.1 provides the costs that could be associated with any Servicing Repurchase Alternative.
- **Servicing Repurchase Defect**: A Servicing Defect attributable to a Servicing Violation for which a repurchase request could be issued without first issuing a notice of Servicing Defect, or a Servicing Repurchase Alternative demand letter. Servicing Repurchase Defects are limited to Servicing Defects that:
  - Cause Freddie Mac's lien, security interest or other property interest to be subordinated, extinguished or become inadequate for the realization of the benefits of the security against the related Mortgaged Premises
  - Pose a significant reputational risk to Freddie Mac
  - Result from the Servicer modifying a Mortgage that was sold to Freddie Mac with recourse or full indemnification in violation of Freddie Mac's modification eligibility requirements
  - Result in the Mortgage to not be, or no longer be, supported by Freddie Mac's Servicing systems; or
  - Cause irreparable damage to the physical improvements to the Mortgaged Premises or REO property or render the Mortgaged Premises or REO property uninhabitable
- **Servicing Violation**: A breach of any Servicer requirement or obligation contained in the Purchase Documents related to Servicing functions including, but not limited to, processing of payments, delinquency management, communications, loss mitigation, property preservation and ensuring appropriate insurance is on the Mortgage or property

## Process for remediating Servicing Violations and related Servicing Defects

The steps described below provide an overview of the process developed in support of the servicing remedies framework that Freddie Mac will follow to categorize Servicing Defects, allow Servicing Corrections to Servicing Defects through a notice of Servicing Defect, and remedy Servicing Defects through a Servicing Remedy letter (either a repurchase request or Servicing Repurchase Alternative demand letter).

### *Step 1 – Determination of whether to send a notice of Servicing Defect or a Servicing Remedy letter*

<u>**Notices of Servicing Defect and Servicing Remedy letters**</u>

If Freddie Mac identifies a Servicing Violation, Freddie Mac may issue either a notice of Servicing Defect or a Servicing Remedy letter.

If Freddie Mac determines that the Servicing Defect resulting from a Servicing Violation can be reasonably corrected by the Servicer, Freddie Mac will issue a notice of Servicing Defect.

If Freddie Mac deems the Servicing Defect resulting from a Servicing Violation to be uncorrectable by the Servicer, Freddie Mac will issue a Servicing Remedy letter. A Servicing Remedy letter may also be issued if a Servicing Defect:

- Is not corrected by the Servicer during the Servicing Correction period, if applicable, or

- Caused or will cause Freddie Mac losses, expenses or damages, notwithstanding any Servicing Correction

The following are limited instances in which a Servicing Defect resulting from a Servicing Violation may be deemed to be uncorrectable. Therefore a Servicing Remedy letter may be issued in lieu of a notice of Servicing Defect when a Servicing Defect:

- Extinguishes the lien, security interest or other property interest, or the lien, security interest or other property interest becomes inadequate for the realization of the benefits of the security against the related Mortgaged Premises
- Causes irreparable damage to the physical improvements to the Mortgaged Premises or REO property or renders the Mortgaged Premises or REO property uninhabitable
- Is a result of a foreclosure sale to a third-party purchaser, completed short sale, or completed deed-in-lieu of foreclosure that was not compliant with the Purchase Documents
- Extinguishes Freddie Mac's ability to either file an insurance claim or seek full recovery of an insurance claim amount, for any insurance or guarantee type; or
- Results in a property that was not preserved and maintained in accordance with the Purchase Documents, and, following acquisition of the REO property, Freddie Mac needs to make any repairs to the property as a result of the Servicer's failure to preserve and maintain the property in accordance with the Purchase Documents

Freddie Mac's determination that a Servicing Defect is uncorrectable or is a Servicing Repurchase Defect may be appealed by the Servicer as part of the existing appeals process (Section 72.6.1). In the event the appeal results in the determination that a Servicing Defect can be corrected, the initial Servicing Remedy letter will be considered withdrawn, Freddie Mac will issue a notice of Servicing Defect, and the Servicer may correct such Servicing Defect during the Servicing Correction period set forth in the notice of Servicing Defect.

A Servicing Repurchase Alternative demand letter will be issued for Servicing Defects not constituting Servicing Repurchase Defects including, if applicable, after a Servicing Correction period. Freddie Mac will issue any such Servicing Repurchase Alternative demand letter within 60 days after the expiration of the Servicing Correction period, including any extensions and resolution of any appeals, unless Freddie Mac provides notice to the Servicer that it is unable to provide the Servicing Repurchase Alternative demand letter within such time frame. Any such notice will describe the anticipated time frame for issuing the related Servicing Repurchase Alternative demand letter. A repurchase request will be issued for any Servicing Repurchase Defect.

If there are multiple Servicing Defects caused by a Servicing Violation or Violations, Freddie Mac may either issue a (i) repurchase request if any Servicing Violation constitutes a Servicing Repurchase Defect, or (ii) a Servicing Repurchase Alternative demand letter for all Servicing Defects, in each case based on each specific Servicing Violation.

If a Servicer fails to comply with any Servicing Remedy letter, Freddie Mac may pursue other available rights and remedies under the Purchase Documents, including repurchase.

**Content of notices of Servicing Defect and Servicing Remedy letters**

The notice of Servicing Defect or Servicing Remedy letter will include the following information:

- The specific Servicing Violation(s) and/or related Servicing Defect(s)
- For a notice of Servicing Defect, the Servicing Correction period
- For a Servicing Repurchase Alternative demand letter, the Servicing Repurchase Alternative amount, including calculation of the Servicing Repurchase Alternative amount. (For a repurchase request, Section 72.3 provides the details regarding the calculation of the repurchase price.)
- For a Servicing Remedy letter, the time frame for completing the repurchase or payment of the Servicing Repurchase Alternative, and information regarding the Servicer's right to appeal and time frame for appeal

### *Step 2 – Servicing Corrections*

During the Servicing Correction period identified in a notice of Servicing Defect, a Servicer must correct the related Servicing Defect(s) in the specified time frame required in the notice of Servicing Defect. Following the Servicing Correction period, Freddie Mac will assess any Servicing Correction made by the Servicer to determine whether a Servicing Remedy letter will be issued. If the Servicer provides an acceptable Servicing Correction, Freddie Mac will not pursue a repurchase; however, Freddie Mac may still issue a Servicing Repurchase Alternative demand letter for any damages, expenses or losses suffered as a result of the Servicing Violation. If Freddie Mac determines it will not issue a Servicing Remedy letter, Freddie Mac will notify the Servicer that the related notice of Servicing Defect has been closed.

### *Step 3 – Appeals of Servicing Remedy letters*

All Servicing Remedy letters issued to a Servicer are subject to appeal by the Servicer in accordance with Section 72.6.1.

At any time during the appeals process, a Servicer may propose a Servicing Repurchase Alternative. Freddie Mac will, in good faith, review and advise the Servicer of its decision.

Freddie Mac may offer or decline to offer the Servicer certain Servicing Repurchase Alternatives based on the Servicer Counterparty Status to the extent there are future obligations required as part of the Servicing Repurchase Alternative. Other factors to be considered by Freddie Mac may include, but are not limited to, the failure to maintain a quality Servicing practice and the Servicer's ability and willingness to comply with other provisions of the Purchase Documents.

## Guide updates

Sections B65.9, B65.41.1, B65.47, C65.8, 66.33, 67.5, 67.13, 70.10, 72.1.1 and 72.6.1 have been updated to reflect these changes.

# DEFAULT MANAGEMENT

## Borrower contact and solicitation

Servicers must comply with the revisions to Borrower contact and solicitation requirements announced in this Bulletin on or after **June 1, 2016**; however, Servicers are encouraged to implement these changes as early as possible.

In response to industry feedback and in an effort to provide a more efficient and flexible process for Servicers to conduct Borrower outreach, we are announcing the following changes to our Borrower contact and solicitation requirements.

### *Outbound contact attempts*

We have revised our requirements for outbound contact attempts to state that Borrower contact campaigns must begin as early in the delinquency cycle as possible to secure a payment or payment arrangement but no later than the $36^{th}$ day after the Due Date of an unpaid monthly installment. Servicers may use their own methodology or a loss mitigation tool to determine which Borrowers to contact earlier than the $36^{th}$ day after the Due Date of an unpaid monthly installment.

Rather than contacting Borrowers every three days throughout the delinquency cycle, Servicers must now continue Borrower contact attempts at least every fifth day at varying times throughout the day until the earlier of the $210^{th}$ day after the Due Date of an unpaid monthly installment or quality right party contact is achieved and:

- The Servicer determines that the Borrower does not want to pursue an alternative to foreclosure, or the Delinquency is cured
- The Servicer achieves quality right party contact and has obtained from the Borrower a promise to pay the delinquent amount by a specified date (not to exceed 30 days)
- A complete Borrower Response Package is received in accordance with Section 64.6; or
- The Borrower enters into a relief or workout option with the Servicer

To conduct outbound contact, Servicers may use alternative contact methods to reach the Borrower as permitted by applicable law including, but not limited to, e-mail, text messaging or voice response unit (VRU) technology.

***General solicitation***

We are reducing the content of the Borrower Solicitation Package in an effort to avoid overwhelming Borrowers with too much information at one time, and revising the timing and amount of solicitations that must be sent to delinquent Borrowers.

We are eliminating the requirement to solicit Borrowers by the 35th and 65th day after the Due Date of an unpaid monthly installment if a resolution to the Delinquency is not reached. We are also eliminating the attorney post-referral to foreclosure solicitation letter that is required to be sent within five Business Days following foreclosure referral.

Servicers must send the Borrower at least one general solicitation no later than the 45th day after the Due Date of an unpaid monthly installment if quality right party contact and a resolution to the Delinquency have not been achieved. The solicitation must include a statement encouraging the Borrower to contact the Servicer, the Servicer's contact information, a brief description of loss mitigation options that are available and contact information for homeownership counseling. This solicitation further aligns with the timing of the early intervention notice that must be sent to delinquent Borrowers pursuant to the Real Estate Settlement Procedures Act (RESPA).

For this general solicitation, we are introducing new Guide Exhibit 1145, the solicitation template for the Borrower Solicitation Letter, which reflects the content a Servicer must include in its general Borrower solicitation. Servicers must amend Exhibit 1145 as necessary to comply with applicable law.

When sending the general solicitation by the 45th day after the Due Date of an unpaid monthly installment, the Servicer may send either:

- A Borrower Solicitation Package that includes the Borrower Solicitation Letter, Guide Form 710, Internal Revenue Service (IRS) Form 4506T-EZ, and frequently asked questions (FAQs) and foreclosure rescue scam information

OR

- The Borrower Solicitation Letter and elect to send Form 710, IRS Form 4506T-EZ, the FAQs and foreclosure rescue scam information upon establishing quality right party contact. The Servicer may also provide the FAQs and foreclosure rescue scam information on its web site and provide a link to that information in the Borrower Solicitation Letter.

As a result of these changes, we are retiring Exhibits 1131 and 1161.

***Quality right party contact***

We are updating our requirements related to quality right party contact to simplify the information Servicers must attempt to collect when making contact with a delinquent Borrower. Servicers no longer have to determine whether the Borrower is planning to vacate the property or understand the Borrower's perception of their financial circumstances. Instead, Servicers must make an attempt to:

- Determine the Borrower's reason for the Delinquency and whether the reason is temporary or permanent in nature
- Determine the Borrower's ability to repay the debt
- Set payment expectations and educate the Borrower on the availability of alternatives to foreclosure as appropriate
- Obtain a commitment from the Borrower to either resolve the Delinquency through traditional methods (paying the total delinquent amount) or engage in an alternative to foreclosure solution

For complete details of all Borrower contact and solicitation requirements described above, Servicers must review Sections 63.2, 64.5 and 64.6.

***Guide updates***

Sections 63.2 and 64.4 through 64.6, C65.11, 66.12, 66.23 and 71.19 have been updated to reflect these changes. Additionally, Exhibit 1145 has been created and Exhibits 1131 and 1161 have been retired.

### Deed-in-lieu of foreclosure incentives

***Borrower incentive***

**December 1, 2015**

In Bulletin 2014-19, we announced a supplemental Borrower incentive payment of up to $7,000 for a deed-in-lieu of foreclosure (DIL), provided the Borrower is not required to make a financial contribution to the workout, for an eligible Borrower whose:

- Mortgaged Premises is located in Connecticut, the District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, New York or Pennsylvania, and
- Evaluation date for the DIL was on or before December 1, 2015

To further assist Servicers in achieving workouts for Borrowers in these States with extended foreclosure time lines, we are removing the expiration date for this supplemental Borrower incentive. All other requirements remain the same, including geographical limitations.

Guide impact: Section B65.44.1

***Servicer incentive reminder***

As a reminder, to receive the Servicer incentive payment for a completed DIL transaction, Servicers must obtain clear and marketable tile to the property, as well as meet all other requirements in Section B65.47. Clear and marketable title must be conveyed to Freddie Mac before reporting the completed DIL transaction via the Freddie Mac Service Loans application as required in Section B65.48.

## ELIMINATION OF SUBSEQUENT TRANSFER OF SERVICING PROCESSING FEE

We will no longer assess the $500 transfer processing fee for all Subsequent Transfer of Servicing requests submitted to Freddie Mac on or after December 16, 2015. The fee elimination does not apply to Subsequent Transfers of Servicing that are currently in process.

Guide impacts: Sections 56.3 and S84.4 and Form 981

## FREDDIE MAC CONTACT INFORMATION

### Broker's Price Opinion (BPO) payment address

To enhance efficiency and reduce operational costs of maintaining two lockboxes, we are no longer maintaining our lockbox at P.O. Box 93434, Chicago, IL 60673-3434.

Servicers must remit payments for BPOs ordered for loss mitigation or foreclosure sale bidding to our lockbox at P.O. Box 730453, Dallas, TX 75373-0453. For overnight and courier deliveries, the payments must be addressed to JP Morgan Chase, Dallas National Wholesale LB TX 1-0029, 14800 Frye Road, Fort Worth, TX 76155, Attn: HomeSteps #730453.

Guide impacts: Section 65.40.1 and Directories 5 and 7

### Investor Reporting department mailing address

We are updating our mailing address for the Investor Reporting department to 8250 Jones Branch Drive, McLean, VA 22102.

Guide impacts: Directories 1, 3 and 9

## ADDITIONAL RESOURCES

We will provide information on training and resources to support changes announced in this Bulletin in a January communication. As always, Servicers are encouraged to visit the **Freddie Mac Learning Center** for new and existing training opportunities.

## GUIDE UPDATES SPREADSHEET

For a detailed list of the Guide updates associated with this Bulletin and the topics with which they correspond, refer to the Bulletin 2015-22 (Servicing) Guide Updates Spreadsheet available at **http://www.freddiemac.com/singlefamily/guide/docs/bll1522_spreadsheet.xls**.

## 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 and select "Servicing."

Sincerely,

Yvette W. Gilmore
Vice President
Servicer Performance Management