



Fannie Mae®

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# Multifamily Selling and Servicing Guide

Effective as of September 8, 2025

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## Section 312 Conflict Mortgage Loans

### 312.01 Description

#### ☒ Requirements

Conflict Mortgage Loan Type	
Conflict Mortgage Loan	<ul style="list-style-type: none"><li>• Any Mortgage Loan in which:<ul style="list-style-type: none"><li>- you, or any of your Lender Affiliates or Lender Senior Executives<ul style="list-style-type: none"><li>▪ owns (or will own) any direct or indirect equity interest in the Borrower, or</li><li>▪ directly or indirectly controls the Borrower; or</li></ul></li><li>- any of your employees, or a group of your employees, owns (or will own) more than a 5% direct or indirect equity interest in the Borrower.</li></ul></li><li>• Any Mortgage Loan with DLA Mezzanine Financing.</li></ul> <p>Any equity interest you acquire in the Borrower relating solely to obtaining the associated LIHTCs is not considered when determining if the Mortgage Loan is a Conflict Mortgage Loan (see <a href="#">Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 709: LIHTC Properties Lender Equity Interest</a>).</p>



Conflict Mortgage Loan Type	
Prohibited Conflict Mortgage Loan	<p>Any Mortgage Loan in which:</p> <ul style="list-style-type: none"><li>• you or any single Lender Senior Executive of yours owns more than a 5% direct or indirect equity interest in the Borrower;</li><li>• any group of your Lender Senior Executives together owns more than a 10% direct or indirect equity interest in the Borrower; or</li><li>• you or any of your Lender Affiliates is the Property manager.</li></ul>



Conflict Mortgage Loan Type	
Controlling Conflict Mortgage Loan	<p>Any Conflict Mortgage Loan where:</p> <ul style="list-style-type: none"><li>• you<ul style="list-style-type: none"><li>- can (other than through the exercise of a lender's rights and remedies under the Loan Documents) require changes to the management, operations, or decision-making of the Borrower, the Key Principal, any Person holding a Controlling Interest in the Borrower or Key Principal, or any Principal or Guarantor, or</li><li>- own any Preferred Equity in the Borrower;</li></ul></li><li>• any of your Lender Affiliates or any employees or any group of employees of yours or any of your Lender Affiliates<ul style="list-style-type: none"><li>- can require changes to the management, operations, or decision-making of the Borrower, the Key Principal, any Person holding a Controlling Interest in the Borrower or Key Principal, or any Principal or Guarantor,</li><li>- individually or together own a 25% direct or indirect equity interest in the Borrower or in any Person holding a Controlling Interest in the Borrower at or after loan origination (including any interest acquired as part of a Transfer/Assumption),</li><li>- own any Preferred Equity in the Borrower, or</li><li>- exercises rights under DLA Mezzanine Financing that results in a Controlling Conflict Mortgage Loan under these requirements; or</li></ul></li><li>• any of your Lender Senior Executives owns any direct or indirect equity interest in the Borrower.</li></ul>

You must not



- Deliver a Prohibited Conflict Mortgage Loan, or
- cause any Portfolio Mortgage Loan to become a Prohibited Conflict Mortgage Loan.

## 312.02 Restrictions

### 312.02A Underwriting

#### Requirements

You must ensure that no Lender employee or other person involved in Conflict Mortgage Loan underwriting and approval owns any direct or indirect equity interest in the Borrower.

You must include the following in your Transaction Approval Memo:

- the amount of any direct or indirect equity interest in the Borrower owned by any Lender Senior Executive, other Lender employee or group of employees; and
- answers to the following questions, including an explanation if your answer to a question is yes:
  - Does any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, own any direct or indirect equity interest in the Borrower?
  - Can any Lender Senior Executive, other Lender employee or group of employees, or any person who participated in the underwriting or approval of the Mortgage Loan, require changes to the management, operations, or decision-making of the Borrower?

In addition, your underwriting submission must include:

- copies of the Borrower's organizational documents and financial statements;
- copies of all organizational documents and financial statements for any Lender Affiliate that holds a direct or indirect equity ownership interest in the Borrower; and
- an organizational chart or diagram showing the:
  - Borrower's complete ownership structure;
  - relationship among the Lender, Borrower, and applicable Lender Affiliate; and
  - percentage ownership of each entity.



### Operating Procedures

You must designate the Mortgage Loan as a Conflict Mortgage Loan in C&D.

## **312.02B** Servicing

### Requirements

As Servicer of a Controlling Conflict Mortgage Loan, you must not

- participate in loss mitigation or special asset management decisions if it becomes a Non-Performing Mortgage Loan, or
- be notified of, or participate in, any negotiations or communications between Fannie Mae and the Borrower, Key Principal, or Principal (or any Affiliate of any of them).

Fannie Mae will make reasonable efforts to provide copies of written communications between Fannie Mae and other parties.

These servicing restrictions apply as long as the Mortgage Loan is considered a Controlling Conflict Mortgage Loan.

### Operating Procedures

1. Fannie Mae has sole discretion to decide what action, if any, to take regarding any Controlling Conflict Mortgage Loan, any Property securing a Controlling Conflict Mortgage Loan, or any Borrower or Guarantor.
2. If Fannie Mae decides that a Controlling Conflict Mortgage Loan has a material risk of default or other characteristics of increased risk, it can
  - designate a substitute servicer or subservicer, or
  - terminate (with or without cause) your right to service the Mortgage Loan.
3. Fannie Mae will comply with the Program Rules Part 3 Sections B and C relating to Fannie Mae initiated servicing transfers. After servicing is transferred, you will retain your loss sharing obligation.

## **312.02C** No First Right of Refusal

### Requirements



You will not have any First Right of Refusal to purchase a Property that secured a Conflict Mortgage Loan, even if the Loss Sharing Addendum to the MSSA grants you this right.

### **312.02D** Additional Disclosure

#### Operating Procedures

For an MBS backed by a Conflict Mortgage Loan, you must indicate in C&D

- that additional disclosure is required, and
- whether it is the Lender, a Lender Affiliate, a Lender Senior Executive, a Lender employee, or group of employees who has a Controlling Interest or a non-Controlling Interest.

### **312.02E** Notifications

#### Requirements

If, after delivering a Mortgage Loan, it becomes a Conflict Mortgage Loan, you must deliver all materials described in this Section to Multifamily Asset Management within 30 days after acquiring each equity interest.



# Glossary

## A

### Affiliate

When referring to an affiliate of a Lender, any other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.

When referring to an affiliate of a Borrower or Key Principal:

- any Person that owns any direct ownership interest in Borrower or Key Principal;
- any Person that indirectly owns, with the power to vote, 20% or more of the ownership interests in Borrower or Key Principal;
- any Person Controlled by, under common Control with, or which Controls, Borrower or Key Principal;
- any entity in which Borrower or Key Principal directly or indirectly owns, with the power to vote, 20% or more of the ownership interests in such entity; or
- any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower or Key Principal.

#### Synonyms

- Affiliates
- Affiliate's

## B

### Borrower

Person who is the obligor per the Note.

#### Synonyms

- Borrowers
- Borrower's

## C

### Controlling Interest

For any entity, ownership or control of 50% or more of the ownership interests in the entity or the power or right to control or modify, directly or indirectly, the management and operations of the entity.



## G

### Guarantor

Key Principal or other Person executing a

- Payment Guaranty,
- Non-Recourse Guaranty, or
- any other Mortgage Loan guaranty.

#### **Synonyms**

- Guarantors

## K

### Key Principal

Person who

- controls and/or manages the Borrower or the Property,
- is critical to the successful operation and management of the Borrower and the Property, and/or
- may be required to provide a Guaranty.

#### **Synonyms**

- Key Principals
- Key Principal's

## L

### Lender

Person Fannie Mae approved to sell or service Mortgage Loans.

#### **Synonyms**

- Lenders
- Lender's

### Lender Affiliate

Other Person or entity that Controls, is Controlled by, or is under common Control with, the Lender.



## Lender Senior Executive

For any Lender any:

- a. senior executive officer serving as its president, chief executive officer, chief financial officer, chief operating officer, chief production officer, chief underwriter, chief asset manager, chief legal officer, chief information security officer, chief compliance officer, or substantially equivalent position;
- b. individual with voting or approval rights over whether the Lender commits to make a Mortgage Loan; or
- c. Immediate Family Member of, or individual having a close relationship with, any individual identified in (a) or (b).

### **Synonyms**

- Lender Senior Executives

## Loan Documents

All Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan.

### **Synonyms**

- Loan Document
- Mortgage Loan Document
- Mortgage Loan Documents

# **M**

## MBS

Mortgage-Backed Security

## Mezzanine Financing

Subordinate debt financing provided to a direct or indirect owner of a Borrower that is secured by a pledge of the direct or indirect equity interest in the Borrower held by the owner, and not by a Lien on the Property.



## Mortgage Loan

Mortgage debt obligation evidenced, or when made will be evidenced, by

- the Loan Documents, or
- a mortgage debt obligation with a Fannie Mae credit enhancement.

### Synonyms

- Mortgage Loans
- Mortgage Loan's

## Multifamily Asset Management

Team that can be contacted at [drawer\\_am@fanniemae.com](mailto:drawer_am@fanniemae.com).

## N

## Non-Performing Mortgage Loan

Mortgage Loan with an uncured default.

### Synonyms

- Non-Performing Mortgage Loans
- Non-Performing Mortgage Loan's
- Non-Performing

## P

## Person

Legal person, including an

- individual,
- estate,
- trust,
- corporation,
- partnership,
- limited liability company,
- financial institution,
- joint venture,
- association, or
- other organization or entity (whether governmental or private).

### Synonyms

- Persons
- Person's



## Portfolio Mortgage Loan

Mortgage Loan purchased by Fannie Mae and held as of a certain date regardless of whether it is a Cash Mortgage Loan or an MBS Mortgage Loan.

### **Synonyms**

- Portfolio Mortgage Loans
- Portfolio Mortgage Loan's

## Preferred Equity

A direct or indirect equity investment in an entity providing that investor with preferred rights to receive dividends, distributions, payments, or returns relative to other equity owners.

## Principal

Person who owns or controls, in the aggregate, directly or indirectly (together with that Person's Immediate Family Members, if an individual), specified interests in the Borrower per [Part I, Chapter 3: Borrower, Guarantor, Key Principals, and Principals, Section 303: Key Principals, Principals, and Guarantors](#).

### **Synonyms**

- Principals

## Property

Multifamily residential real estate securing the Mortgage Loan, including the

- fee simple or Leasehold interest,
- Improvements, and
- personal property (per the Uniform Commercial Code).

### **Synonyms**

- Properties
- Property's

## S



## Servicer

Primary Person servicing the Mortgage Loan, including

- the originator,
- seller, or
- a third party.

### **Synonyms**

- Servicers
- Servicer's

## T

## Transfer/Assumption

Transaction changing the ownership of the Borrower or Property.

### **Synonyms**

- Transfers/Assumptions