Fannie Mae®

Multifamily Selling and Servicing Guide

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Section 704 Third-Party Financing

704.01 Interest Rate and Payments

Requirements

You must ensure any Third-Party Financing:

- has a fixed interest rate or no interest payable; and
- for non-Soft Financing, interest:
  - is payable on a current basis; and
  - does not defer or accrue.

704.02 Loan Term

Requirements

You must ensure any Third-Party Financing that does not fully amortize, including any Soft Financing, matures at least 180 days after the Maturity Date of

- the Mortgage Loan, and
- any Pre-Existing Mortgage Loans.

Guidance

Third-Party Financing may:

- if it fully amortizes, mature before the Maturity Date of
  - the Mortgage Loan, and
  - any Pre-Existing Mortgage Loans; and/or
- be fully or partially forgiven before the Mortgage Loan Maturity Date.

704.03 Collateral and Credit Support

Requirements

You must ensure the Mortgage Loan is secured by the same credit support and collateral as any Third-Party Financing, including any

- recourse to the Borrower or any guarantor, or
- additional collateral.

You may secure the Third-Party Financing with a Lien on the Property if the Lien:

- is subordinated to the Security Instrument's Lien per
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.07: Subordination Agreement,
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.08: Lien Priority and Title Insurance Policy, and
  - Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.09: Form of Loan Documents for Third-Party Financings; and
- includes only the same collateral covered by the Mortgage Loan's Security Instrument.

704.04 Soft Financing

☑ Requirements

Provision	To be considered Soft Financing...
Financing Terms	Third-Party Financingterms must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704: Third-Party Financing.
Payments	Any Third-Party Financing payments due during the Mortgage Loan term (excluding ongoing fees which are addressed separately) must be payable only from Excess NCF, with up to: • 100% of the available Excess NCF (after subtracting amounts payable per Subsections 1 and 2 of the definition) for all Soft Financing payments to the Sponsor or an Affiliate; or • 75% of the available Excess NCF (after subtracting amounts payable per Subsections 1 and 2 of the definition) for all other Soft Financing.

Provision	To be considered Soft Financing...
Ongoing Mandatory Fees	The loan documents for any Third-Party Financing may require paying ongoing mandatory fees, such as facility fees, servicing fees, and fees for monitoring compliance with an Affordable Regulatory Agreement or any Private Affordability Agreement, provided you: • include any ongoing mandatory fees as an expense in calculating NCF; and • at the Mortgage Loan closing, escrow at least 12 months of ongoing mandatory fees, which must be funded from a source other than Mortgage Loan proceeds.
Events of Default	Failure to pay principal and/or interest due to lack of available Excess NCF must not be an event of default per the Third-Party Financing loan documents.
Subordination	Subordination must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.07: Subordination Agreement.

To determine the acceptability of Soft Financing if multiple Soft Financing loans exist, you must:

- consider the maximum aggregate Soft Financing payments during the Mortgage Loan term;
- if the Borrowers agreements (including Subordinate Loan documents, any other documents evidencing any Soft Financing, and Borrowers organizational documents) do not specify Soft Financing payment priority, ensure intercreditor arrangements document payment priority among Soft Financing creditors; and
- confirm the Excess NCF requirements are not exceeded in the aggregate among the applicable intercreditor provisions.

Guidance

Soft Financing may have:

- a nominal interest rate;
- principal payments that do not fully amortize the Third-Party Financing over its term;
- optional principal payments;

- a covenant to comply with an Affordable Regulatory Agreement;
- an event of default resulting from non-compliance with an Affordable Regulatory Agreement; and
- a loan term significantly longer than the Mortgage Loan term, with the Third-Party Financing either
  - being forgiven over time or at its maturity date, or
  - due only upon a Property sale.

704.05 Third-Party Lender

☑ Requirements

If the lender type[1] is...	Then a Third-Party Financing...
• Public Entity; or • non-profit	Can: • be Soft Financing; or • require mandatory payments of - P&I, or - interest only.
Affiliate of the Borrower that is not a: • Public Entity; or • non-profit	Must qualify as Soft Financing per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.04: Soft Financing.
Any other lender	Is not permitted.
1 For a Third-Party Financing structured as a bond financing, the bondholder is the lender for this analysis.	

704.06 Developer's Notes

☑ Requirements

You must ensure any developer note or advance due the Sponsor or an Affiliate is Soft Financing per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.04: Soft Financing.

704.07 Subordination Agreement

☑ Requirements

For all Third-Party Financing, including Soft Financing, you, the Borrower, and the third-party lender must enter into:

- if the third-party lender is a Public Entity, a Fannie Mae form
  - Subordination and Standstill Agreement (Public Entity) (Form 6456), or
  - Subordination and Standstill Agreement (Public Entity) (Form 6456.SUB); or
- if the third-party lender is not a Public Entity, a Fannie Mae form Subordination and Standstill Agreement (Non-Public Entity) (Form 6414).

If a Public Entity, as issuer of a bond financing	Then you must enter into
Assigns its Third-Party Financing documents to a bond trustee	Form 6414 with the • Borrower, • Public Entity, • bond trustee, and • bondholder.
Reserves certain rights under the Third-Party Financing documents that remain unassigned	Form 6456, but only as to the reserved rights, with the • Borrower, and • Public Entity, as third-party lender.
• Assigns its Third-Party Financing documents to a bond trustee; and • Reserves certain rights under the Third-Party Financing documents that remain unassigned	Both: • Form 6414 with the - Borrower, - Public Entity, - bond trustee, and - bondholder; and • Form 6456, but only as to the reserved rights, with the - Borrower, and - Public Entity, as third-party lender.

704.08 Lien Priority and Title Insurance Policy

☑ Requirements

You must ensure:

- The Third-Party Financing, along with any Lien securing the subordinate loan, remains at all times, subordinate to the Security Instrument's Lien, including any refinancing.
- The Subordination Agreement is recorded in the land records immediately after the subordinate security instrument is recorded.
- The Lender's title insurance policy reflects the recordation of the Subordination Agreement.

704.09 Form of Loan Documents for Third-Party Financings

☑ Requirements

You must confirm the loan documents for the Third-Party Financing:

- comply with this Chapter; and
- do not require the Borrower to maximize rents at the Property, even if the Property is subject to
  - an Affordable Regulatory Agreement, or
  - any Private Affordability Agreement.

704.10 Prepayment

☑ Requirements

The Borrower may not prepay or redeem the Third-Party Financing without Fannie Maes consent.

704.11 LIHTC Equity Bridge Loans

☑ Requirements

LIHTC Equity Bridge Loan	Requirements
LIHTC Type	Must be federal LIHTC.
Lender Eligibility	The LIHTC equity bridge lender must not be on ACheck.

LIHTC Equity Bridge Loan	Requirements
Repayment	Must be completely repaid on or before the final LIHTC equity payment associated with the Property's placed-in-service date.
Amount	• Maximum of 80% of aggregate LIHTC equity contribution. • Per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 703.02E: Initial LIHTC Equity, you must ensure at least 20% of the aggregate LIHTC equity that the LIHTC investor or syndicator must contribute into the limited partnership is received by the Mortgage Loan Origination Date.
Funding Conditions	No performance hurdles or Property performance benchmarks tied to bridge loan payments.
Note	• Non-recourse to Borrower. • Fixed or variable rate.
Guaranty (Repayment and/or Completion)	Must be subordinated to any Guaranty in favor of Fannie Mae.

Bridge Loan Collateral Types (multiple types allowed)	Bridge Lender Affiliated with You or LIHTC Investor	Bridge Lender Unaffiliated with You, LIHTC Investor, or Sponsor	Bridge Lender Affiliated with Sponsor
Assignment of Rights to Capital Contribution from LIHTC Equity Investor	Acceptable	Acceptable	Unacceptable
Assignment of Development Fee	Acceptable	Acceptable	Acceptable
Subordinate Security Instrument	Unacceptable	Unacceptable	Unacceptable

Bridge Loan Collateral Types (multiple types allowed)	Bridge Lender Affiliated with You or LIHTC Investor	Bridge Lender Unaffiliated with You, LIHTC Investor, or Sponsor	Bridge Lender Affiliated with Sponsor
Assignment of General or Limited Partnership Interests (but not both)	Acceptable if Bridge Lender has LIHTC experience	Acceptable if Bridge Lender has LIHTC experience	• Acceptable for general partnership Interests • Unacceptable for limited partnership Interests
Subordination Agreement	Form provided by Fannie Mae	Form provided by Fannie Mae	Form provided by Fannie Mae

704.12 Grant Funding

Requirements

You must determine whether any Grant Funding is received:

- directly by the Borrower; or
- by any Borrower Affiliate and used to fund any:
  - Third-Party Financing; or
  - Grant Funding from the Borrower Affiliate to the Borrower.

If any Grant Funding above is subject to clawback, recapture, or other contingent repayment (e.g., upon an event of non-compliance or default), you must:

- ensure any collateral for the contingent repayment complies with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.03: Collateral and Credit Support; and
- with the Borrower, the Borrower Affiliate (if applicable), and the grantor, enter into and record the applicable:
  - Subordination Agreement (Affordable) (Form 6456), if the grantor is a Public Entity; or
  - Subordination Agreement (Conventional) (Form 6414), if the grantor is not a Public Entity.

If any Borrower Affiliate receives Grant Funding and, in turn, loans those funds to the Borrower:

- that Third-Party Financing must comply with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704: Third-Party Financing; and
- the Borrower Affiliate must enter into the correct Subordination Agreement per Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.07: Subordination Agreement.

Glossary

A

ACheck	Lender due diligence performed for the Borrower, Key Principal, and Principal using the ACheck™ application. **Synonyms** • Applicant Experience Check
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

Affordable Regulatory Agreement	Recorded or unrecorded regulatory, land use, extended use, restrictive covenant, or similar agreement or restriction that is imposed by a Public Entity, placing rent, income, or other affordability restrictions on the use or occupancy of the Property, but which does not include a HAP Contract. **Synonyms** • Affordable Regulatory Agreements

B

Bond Trustee	Trustee for a Credit Enhancement Instrument. **Synonyms** • Bond Trustee's
Bonds	Tax-exempt or taxable multifamily revenue bonds, or other tax-exempt or taxable bonds, issued to finance 1 or more Credit Enhancement Mortgage Loan Properties. **Synonyms** • Bond
Borrower	Person who is the obligor per the Note. **Synonyms** • Borrowers • Borrower's

C

Collateral	Property, Personal Property, or other property securing a Mortgage Loan.

E

Excess Net Cash Flow	For any specified period, the Net Cash Flow remaining after subtracting, in order of priority: • first, all amounts due and owing on the Mortgage Loan, including: - principal and interest; and - any other funding obligations per the Loan Documents; • second, any payments due on any Third-Party Financing that is not Soft Financing compliant with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 704.04: Soft Financing; and • third, any payments due on any Third-Party Financing not already subtracted per the above. **Synonyms** • Excess NCF • Surplus Net Cash Flow • Surplus NCF

G

Grant Funding	Funding for the Propertys construction or renovation given to the Borrower, or to a Borrower Affiliate that in turn loans or grants the funds to the Borrower, with no repayment obligation if specified requirements are met.
Guarantor	Key Principal or other Person executing a • Payment Guaranty, • Non-Recourse Guaranty, or • any other Mortgage Loan guaranty. **Synonyms** • Guarantors
Guaranty	Payment Guaranty, Non-Recourse Guaranty, or other guaranty by a Guarantor for the Mortgage Loan.

Guide	Multifamily Selling and Servicing Guide controlling all Lender and Servicer requirements unless a Lender Contract specifies otherwise. **Synonyms** • DUS Guide

I

Investor	MBS Investor for an MBS Mortgage Loan, or Fannie Mae for a Cash Mortgage Loan. **Synonyms** • Investors • Investor's
Issuer	Entity that: • issues Bonds for a Credit Enhancement Mortgage Loan; • packages mortgages for sale as a Security for an MBS; or • issues a Letter of Credit. **Synonyms** • Issuers

L

Lender	Person Fannie Mae approved to sell or service Mortgage Loans. **Synonyms** • Lenders • Lender's
Lien	Lien, mortgage, bond interest, pledge, security interest, charge, or encumbrance of any kind. **Synonyms** • Liens

Loan Documents	All Fannie Mae-approved documents evidencing, securing, or guaranteeing the Mortgage Loan. **Synonyms** • Loan Document • Mortgage Loan Document • Mortgage Loan Documents
Low-Income Housing Tax Credit	Federal program offering tax credits to owners of eligible properties that contain low-income occupants and rent restrictions. **Synonyms** • Low-Income Housing Tax Credits • Low Income Housing Tax Credits • LIHTC • LIHTCs

M

Maturity Date	Date all Mortgage Loan amounts become fully due and payable per the Loan Documents. **Synonyms** • Maturity Dates
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

Mortgage Loan Origination Date	Date you fund a Mortgage Loan to the Borrower. **Synonyms** • Mortgage Loan's Origination Date • Origination Date
Multifamily Affordable Housing Property	Property that: • complies with Part III, Chapter 7: Multifamily Affordable Housing Properties, Section 702: MAH Property Eligibility; and • is underwritten per Part III, Chapter 7: Multifamily Affordable Housing Properties. **Synonyms** • MAH • Multifamily Affordable Housing • MAH Property

N

Net Cash Flow	At underwriting or for any specified period, the amount calculated per Part II, Chapter 2: Valuation and Income, Section 203: Income Analysis and the applicable products and features in Part III. **Synonyms** • NCF

Note	Instrument evidencing a Mortgage Loan obligation, including
	• Form 6010 series,
	• any other Fannie Mae-approved note, and
	• all applicable
	  - addenda,
	  - schedules, and
	  - exhibits.
	
	Synonyms
	• Notes

P

P&I	Principal and interest
Pre-Existing Mortgage Loan	Multifamily residential real estate loan secured by Liens against the Property having higher priority than the Lien securing the Subordinate Loan purchased by Fannie Mae. **Synonyms** • Pre-Existing Mortgage Loans
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
Private Affordability Agreement	Recorded or unrecorded regulatory, land use, extended use, restrictive covenant, agreement, or restriction that is imposed by any non-Public Entity, placing rent, income, or other affordability restrictions on the use or occupancy of the Property. **Synonyms** • Private Affordability Agreements
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

Public Entity	A federal, state, or local government entity, or an entity that: • is created by - state statute, or - one or more governmental entities acting pursuant to applicable statutory authority; • has a governing body that is - elected by voters in the applicable jurisdiction, or - appointed by an official or body that has been elected by voters in the applicable jurisdiction; • is formed for a governmental purpose and performs a governmental function; • is required by law to - publicly post its meeting agendas and minutes, and - hold meetings that are open to the public to the same extent as state or local governmental entities in its state of domicile; • does not permit any part of its net revenues or earnings to inure to the benefit of any private Person; and • is not a community development financial institution.

S

Security	MBS, PFP MBS, or REMIC. **Synonyms** • Securities
Security Instrument	Instrument creating a lien or encumbrance on 1 or more Properties and securing the Loan Document obligations. **Synonyms** • Security Instruments • Security Instrument's

Servicing Fee	Fee a Servicer receives for collecting payments, managing operational procedures, and assuming your portion of credit risk for a Mortgage Loan, and which may be expressed as a percentage. **Synonyms** • Servicing Fees
Sponsor	Principal equity owner and/or primary decision maker of the Borrower (often the Key Principal or the Person Controlling the Key Principal). **Synonyms** • Sponsors • Sponsor's
Subordinate Loan	Multifamily residential real estate loan secured by a Lien against the Property having a lesser priority than the Lien securing another multifamily residential real estate loan on the same Property. **Synonyms** • Subordinate Loans

T

Third-Party Financing	Any loan to, or indebtedness of, a Borrower that: • is not a Supplemental Mortgage Loan or Pre-Existing Mortgage Loan; and • either: - requires repayment by the Borrower; or - is forgiven (over time or at maturity) subject to Borrower compliance with certain covenants or conditions.