

Agency Guides/Fannie Mae Multifamily/Multifamily Selling and Servicing Guide/Part III: New Underwriting/Part IIIA: Base Underwriting Requirements/Chapter 4: The Borrower, Key Principals, and Principals/Section 401: Generally (09/16/13)

Section 401: Generally (09/16/13)

The Lender must perform an overall risk assessment of the Borrower, Key Principals and Principals, taking into consideration the specifics of the transaction. In all events, the Lender must obtain and analyze any information that it determines is necessary to complete an appropriate credit review, including:

- organizational structure;
- multifamily business experience and qualifications;
- general credit history; and
- current and prospective financial condition.

The financial strength, experience, qualifications, character and credit history of the Borrower, Key Principals and Principals, as determined by the analysis must be commensurate with the size, complexity, structure and risks of the transaction.

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Section 402.01: Single Asset Entity

Except as provided below, the only eligible Borrower structure is a domestic single-asset entity Borrower. The Lender's analysis of the Borrower and the Borrower's organizational documents must include a determination of whether:

- the acquisition of any additional real property, personal property or assets other than the Property is permitted;
- the operation or participation in any business other than the management and operation of the Property is permitted;
- the Borrower's assets or funds are commingled with those of any other Person and, if so, whether such assets or funds can be segregated and identified;
- the Borrower's financial statements, accounting records and other organizational documents are maintained with those of any other Person; or
- the Borrower has assumed, guaranteed or obligated itself for the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business).

If a Borrower owns more than a single asset, the Borrower may still qualify as a single-asset entity, so long as the Borrower:

- provides the Lender with a current financial statement for each real property owned;
- does not have any existing debt secured by a Lien on any of the Borrower's real property, other than a Mortgage Loan purchased by Fannie Mae;
- does not have any of its direct or indirect equity interest subject to any Mezzanine Financing; and
- is not permitted, without the written approval of Fannie Mae, to (i) acquire any additional debt; (ii) increase any existing debt; or (iii) acquire any additional real property.

The Borrower may be ultimately owned by foreign persons or entities, so long as at least 1 United States domiciled tier owning the Borrower has been established.

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Section 402.02: Co-Tenant Borrowers

A. Eligibility

A Co-Tenant Borrower may be an eligible Borrower if:

- no more than 5 co-tenants comprise the Co-Tenant Borrower;
- each co-tenant jointly and severally executes the Loan Documents;
- no co-tenant is an individual; and
- each co-tenant is a single asset entity satisfying the requirements of Section 402.01 of this Chapter.

B. Tenancy-in-Common Agreement

A validly executed and legally enforceable tenancy-in-common agreement must be in place or entered into by all co-tenants at the time of the Mortgage Loan closing, and the Lender must verify that such tenancy-in-common agreement provides, at a minimum:

- that each co-tenant is bound by the terms of the tenancy-in-common agreement;
- that a single co-tenant (or the Key Principal of such co-tenant) has the authority to manage the day to day business and affairs of the Property (the "Representative Co-Tenant Borrower") (or the Lender must verify that, in lieu of a named Representative Co-Tenant Borrower, a property manager with the authority to manage the day to day business and affairs of the Property has been validly appointed);
- that the Representative Co-Tenant Borrower has the power to deal with the Lender on matters relating to the operation and maintenance of the Property either through powers granted to the Representative Co-Tenant Borrower in the tenancy-in-common agreement or by an irrevocable power-of-attorney from the other Co-Tenant Borrowers (or the Lender must verify that a property manager with the authority to deal with the Lender on such matters has been validly appointed);
- that each Co-Tenant Borrower (or the Key Principal of each such Co-Tenant Borrower) has buy-out rights as to any other co-tenant (and the Lender must verify that such Co-Tenant Borrowers are financially able to effect such a buy-out);
- the name, address, telephone number and percentage of ownership interests of each Co-Tenant Borrower, and a requirement that (i) each Co-Tenant Borrower agrees to promptly notify all other Co-Tenant Borrowers and any mortgage lender of any change in address or telephone numbers, and (ii) a single Key Principal of the Representative Co-Tenant Borrower has been named as the party to receive all notices or other communication from any mortgage lender on behalf of all Co-Tenant Borrowers;
- that all payments under any mortgage loan secured by a Lien on the Property has priority over distributions to the Co-Tenant Borrowers and that such distributions to Co-Tenant Borrowers are subordinate and subject to the terms and conditions of any such mortgage loan; and
- that each Co-Tenant Borrower has waived (i) its right to residency in the Property, and (ii) any Lien rights against the Property and all other Co-Tenant Borrowers.

C. Key Principal Execution of Guaranty

At least 1 Key Principal must be named for each Co-Tenant Borrower and each such Key Principal must execute a Non-Recourse Guaranty or a Payment Guaranty, as applicable, if a Guaranty is required for the Mortgage Loan.

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Section 402.03: Fund Borrowers

For any Borrower that relies on equity investments from fund investors for its continued existence, the Lender's analysis of such Borrower must include:

- the experience and performance history of the fund manager in connection with managing other similar funds;
- the fund's ability to raise equity from financially substantial investors;
- the performance of the fund;
- the leverage level of the fund;
- the net worth and liquidity of the fund; and
- the quality of the Property and market where the Property is located.

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Section 403.01: Generally

For each Mortgage Loan, the Lender must identify all Key Principals and Principals of the Borrower. At least 1 Key Principal must have an ownership interest in the Borrower. Any Key Principal that provides a Guaranty of the Mortgage Loan must be a non-foreign person or entity.

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Section 403.02: Entity Key Principals

Entity Key Principals are permitted. An acceptable entity Key Principal must have an established track record of successful business performance and sufficient financial strength. Any Key Principal entity assuming liability under a Guaranty must be:

- an existing entity (e.g., a corporation, limited liability company, limited liability partnership, or other acceptable structure) that is not newly formed;
- a well-capitalized, stable, on-going business concern that would be expected to:
 - continue to remain financially healthy;
 - be able to support the Property; and
 - meet all Key Principal requirements and obligations under the Guaranty over the term of the Mortgage Loan, with an expectation that the entity's assets and net worth should be significantly in excess of what would be minimally acceptable for an individual Key Principal; and
- the type of business that, except for assets specifically pledged or committed to other liabilities, would make it unlikely that other assets would be siphoned off for use by other entities, transferred, sold, or otherwise disposed of in order to avoid meeting Key Principal obligations.

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Section 403.03: Fund Key Principals

For any Fund Key Principal or Fund Principal, the Lender must review the relevant organizational documents and private placement memorandum, if applicable, to ascertain:

- the entity's expiration date;
- whether any extension to the entity's existence is provided and, if any such extension provisions exist, the conditions to approving the extension; and
- the process for winding up the business affairs of the entity, including whether or not the Fund is organized in a state that requires the orderly dissolution of investment funds, such as Delaware or Illinois.

The Lender must document and justify its credit analysis of the Fund Key Principal or Fund Principal in the Lender's Transaction Approval Memo. The Lender's analysis must include the entity's:

- experience and performance history managing other similar funds;
- ability to raise equity from financially substantial investors;
- performance;
- leverage;
- net worth; and
- liquidity.

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Section 404: Financial Statements (09/16/13)

The Lender must obtain signed financial statements that are dated less than 12 months prior to the Commitment Date from all parties relevant to the transaction. If the signed financial statements are more than 12 months old, a certification that there has been no material adverse change to the financial condition reflected in such statements, signed by the relevant party and dated within 30 days prior to loan application must be obtained. Financial statements more than 24 months old are not acceptable. All financial statements should contain:

- a schedule of real estate owned by the party providing the financial statement;
- all other assets, including notes receivable from related entities, and an estimate of the market value of each asset and the basis for calculating value estimates;
- all liabilities and contingent liabilities, including debts under lines or letters of credit, personal guaranties, unmet obligations to partnerships or other entities and other obligations in the future (the amount and timing of all such obligations must be specified or described); and
- any other factors that may materially impact the Borrower's or Key Principal's financial position immediately or during the term of the Mortgage Loan (including any known threat of potential lawsuits that may arise from such parties' business operations).

If the Lender fails or is unable to obtain any of the above information, the Lender must document the reasons for such failure or inability and justify its credit analysis in its Transaction Approval Memo.

The financial statements submitted by Principals need not contain every item listed above, as long as the Lender is satisfied that the financial statement adequately reflects the Principal's solvency.

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Section 405: Credit Reports, FICO Scoring, and Credit Report Review for Mortgage Loans \$3,000,000 or Less (11/04/13)

For any Mortgage Loan having an original principal amount of \$3,000,000 or less, the following requirements apply for all individual Borrowers (if a waiver of the single asset entity requirement has been approved) and all individual Key Principals and Principals.

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Section 405.01: Credit Report

Credit reports are required for all individual Borrowers and all individual Key Principals and Principals. Credit reports must be obtained from at least 2 of the following credit information services:

- Equifax;
- Experian; or
- TransUnion.

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Section 405.02: FICO Scoring

All individual Borrowers, Key Principals, and Principals must achieve the Minimum FICO Requirement. For determining compliance with the Minimum FICO Requirement, the FICO score for an individual Borrower, Key Principal or Principal must be determined as follows:

- if credit reports are obtained from 2 of the 3 approved credit information services, then the lower score must be utilized, or
- if credit reports are obtained from all 3 credit information services, then the middle score must be utilized.

If a Borrower, Key Principal or Principal is married to another Borrower, Key Principal or Principal, then compliance with the Minimum FICO Requirement must be determined by using the lower FICO score of the 2 married individuals.

If any Small Mortgage Loan has multiple individual Borrowers or if any Mortgage Loan has multiple individual Key Principals or Principals, the Lender is required to use the average of their respective FICO scores to determine compliance with the Minimum FICO Requirement.

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Section 405.03: Reviewing the Credit Report

The Lender must conduct a thorough review and analysis of the credit report for each individual Borrower and each individual Key Principal. Such review and analysis must assess whether there is reported:

- any mortgage late payments occurring within the previous 36 months;
- any excessive revolving or installment late payments occurring within the previous 12 months;
- any credit card or other unsecured debt balances deemed excessive by the Lender;
- any tax liens that have been filed or reported within the previous 5 years;
- any discharged bankruptcies or mortgage foreclosures occurring within the previous 10 years; or
- any outstanding judgments or collections that exceed \$5,000.

Without regard to whether the individual Borrower or any individual Key Principal or Principal has met the Minimum FICO Requirement, if any of the above matters are reported or there is other derogatory credit history reported in the credit report, the Borrower must provide satisfactory explanations regarding such matters and the Lender must validate such explanations and determine that future delinquencies are unlikely. Any such determination must be documented in the Lender's Transaction Approval Memo.

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Section 406: Fraudulent Conveyance (09/16/13)

The Lender must not make any Mortgage Loan if it has reason to believe there is an actual intent by the Borrower or its Key Principals or Principals to delay, hinder, or defraud creditors.

To show that the Mortgage Loan was made in good faith, a careful review of the facts is needed to provide a defense to a fraudulent conveyance or fraudulent transfer type of claim. The Lender must obtain the appropriate Multifamily Underwriting Certificate. The Multifamily Underwriting Certificate must be reviewed as part of the Lender's credit review and held in the Lender's Servicing File.

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Section 407: Multifamily Underwriting Certificate (09/16/13)

The Borrower and each Key Principal must execute and provide to the Lender the appropriate Multifamily Underwriting Certificate, that certifies the accuracy and completeness of the rent roll, the operating statement, all financial statements and schedules of real estate owned, as applicable (copies of which are to be attached to the Multifamily Underwriting Certificate), and such other information as is included in the Multifamily Underwriting Certificate. Each Multifamily Underwriting Certificate must:

- be signed and certified as true, correct, and complete,
- be dated not more than 90 days prior to the date the Lender requests a Commitment from Fannie Mae, and
- be updated with either a new Multifamily Underwriting Certificate or, if the 90-day period is exceeded, a certification that there has been no material adverse change to the financial condition reflected in such statements.

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Section 409.01: Office of Foreign Assets Control

All Lenders must establish and maintain an effective U.S. Treasury Department Office of Foreign Assets Control ("OFAC") compliance program.

Fannie Mae will not (i) purchase any Mortgage Loan, or (ii) approve any Transfer/Assumption of any Mortgage Loan, where the Borrower (or the substitute Borrower in the case of a Transfer/Assumption), or any Key Principal or Principal of such Borrower or substitute Borrower, is a "specially designated national and blocked person" on the Specially Designated Nationals List maintained by OFAC. It is the Lender's responsibility to determine and verify that each Borrower, Key Principal, and Principal (including any proposed substitute Borrower, Key Principal or Principal in connection with a Transfer/Assumption of the Mortgage Loan) is not listed on the most recent OFAC Specially Designated Nationals List prior to delivery of the Mortgage Loan to Fannie Mae.

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Section 409.02: Bank Secrecy Act and Anti-Money Laundering Program

If a Lender's anti-money laundering program ("Lender AML Program") causes the Lender to determine that a Borrower (or the substitute Borrower in the case of a Transfer/Assumption), or any Key Principal or Principal of such Borrower or substitute Borrower, exhibits evidence of a "red flag" that indicates a high risk of money-laundering or other criminal activity, then prior to requesting a Commitment from Fannie Mae, and without informing the Borrower, any Borrower Affiliate, Key Principal, or Principal, the Lender must report all information that triggered the red flag to Fannie Mae at:

- mortgagefraud_tips@fanniemae.com or 800-732-6643, AND

- partner_risk_management@fanniemae.com.

Notwithstanding anything to the contrary in the Guide, Fannie Mae's Commitment to purchase a Mortgage Loan is expressly contingent upon the continuing absence of any "red flags" indicating a high risk of money-laundering or other criminal activity associated with the Borrower (or the substitute Borrower in the case of a Transfer/Assumption), or any Key Principal or Principal of such Borrower or substitute Borrower. If the Lender determines that any such "red flag" exists after Fannie Mae's confirmation of the Commitment for a Mortgage Loan, in addition to reporting the information required above, the Lender must obtain Fannie Mae's written approval to deliver the Mortgage Loan to Fannie Mae for purchase. The Lender should not provide any information to Fannie Mae that would indicate whether the Lender has filed a Suspicious Activity Report ("SAR") with the Financial Crimes Enforcement Network ("FinCEN"), and nothing in this section should be construed as requiring the Lender to report to Fannie Mae whether an SAR has been filed.

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Section 409.03: FHFA Suspended Counterparty Program

All Lenders must establish and maintain procedures requiring the Lender to confirm that the FHFA's Suspended Counterparty Program list (the "SCP List") does not include the Borrower or any Key Principal or Principal.

Fannie Mae will not (i) purchase any Mortgage Loan, or (ii) approve any Transfer/Assumption of any Mortgage Loan, where the Borrower (or the substitute Borrower in the case of a Transfer/Assumption), any Key Principal or any Principal of such Borrower or substitute Borrower, is included on the SCP List. Prior to the Delivery of the Mortgage Loan to Fannie Mae, it is the Lender's responsibility to determine and verify that the SCP List does not contain the name of the Borrower, any Key Principal, or any Principal (including any proposed substitute Borrower, Key Principal or Principal in connection with a transfer or assumption of the Mortgage Loan).

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Section 410: Execution of Non-Recourse Guaranty (11/04/13)

For any Mortgage Loan having an Underwritten Debt Service Coverage Ratio ("DSCR") of less than 1.35 or a Loan-to-Value ("LTV") of greater than 65%, a Key Principal is required to execute a Non-Recourse Guaranty. The execution of the Non-Recourse Guaranty by a Key Principal is not required if the Borrower is a Cooperative Organization or a publicly traded entity.

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Section 412: Maryland IDOT Transactions (09/16/13)

For all Maryland transactions in which an indemnity deed of trust ("IDOT") is used to secure the Mortgage Loan, the Lender must complete the identical underwriting analysis with regard to the owner of the Property (known as the "IDOT Guarantor" in the Loan Documents) as is required for the Borrower in non-Maryland IDOT Mortgage Loan transactions.