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May 16, 2022 **APM 22-03**

MEMORANDUM FOR: All Participants in Ginnie Mae Programs

FROM: Alanna McCargo, President

SUBJECT: Delinquent Loan Buyout Requirements

Ginnie Mae has monitored the loss mitigation policy changes in response to the COVID-19 pandemic that have been implemented by the Federal Housing Administration (FHA), Veterans Administration (VA) and US Department of Agriculture Rural Development (RD) (collectively, “the Agencies”). This memorandum seeks to ensure clarity in how the requirements of the Mortgage-backed Securities (MBS) Guide and other program documents apply to these new Agency standards with respect to delinquent loan buyouts. Each of the Agencies has confirmed with Ginnie Mae staff that their respective program policy should not be interpreted as requiring loan modifications that conflict with the terms of Ginnie Mae MBS program, which state that loans may not be bought out of a pool until three consecutive payments have been missed or the borrower has completed a Trial Payment Plan (TPP) prior to a modification.

This APM reiterates that the longstanding requirements of the MBS Guide, Guaranty Agreement, and prospectus must be complied with, and, as a reminder, provides additional background and context about the treatment of loan modifications under the Ginnie Mae Mortgage-Backed Securities (MBS) program. Ginnie Mae’s requirements are not simply program policy but are representations by the Issuer to the Investor through the prospectus and are subject to various securities and tax laws. Ginnie Mae MBS are structured as Grantor Trusts that have limited power to vary the assets of the trust, save for the few circumstances provided for in the prospectus. Most of Ginnie Mae MBS are further securitized into Real Estate Mortgage Investment Conduit (REMIC) securities, which have similarly limited ability to vary assets. These structural elements are essential to the MBS program’s ability to provide liquidity to the federal housing programs.

Delinquent Loan Buyout Eligibility

As a reminder, Ginnie Mae’s buyout requirement, as defined in the Mortgage Backed Securities Guide (MBS Guide) Chapter 18, Part 3, §B(1), states that loans may not be bought out until three consecutive payments have been missed, or the borrower has completed a Trial Payment Plan prior to a modification. This requirement is one of an Issuer’s rights and obligations established in the Guaranty Agreement executed with Ginnie Mae and in the prospectus, which establishes the terms under which the securities are issued, including the requirements for servicing the underlying mortgages. Both of these documents require that a loan must come into default and remain in default for more than 90 consecutive days to be eligible to be bought out of the pool.

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Prohibition against modifying loans while in Ginnie Mae MBS

MBS Guide Chapter 18, Part 2, §B(4) prohibits Issuers from modifying the terms of loans in Ginnie Mae MBS that affect the amount and duration of payments. The Guaranty Agreement and prospectus require the Issuer to pass through the interest and principal, as scheduled, plus any unscheduled payments. The "scheduled/scheduled" nature of the securities does not allow for changes to loan terms that would affect the amount of interest and principal to be passed through to the Investors. Modifying a loan, which alters the amount and duration of payments, in addition to other loan terms does not comply with the representations made in the prospectus and Guaranty Agreement. Therefore, loans must be bought out of pools prior to modification.

The requirements of the prospectus are echoed in Chapters 9 and 24 of the MBS Guide, and the express prohibition of modifying loans while pooled is at Chapter 18, Part 3 §B(4).

Exception for Loan Subject to a Trial Payment Plan

As mentioned, loans that are subject to a Trial Payment Plan (TPP) under the guidance of the Agencies, that complete the TPP, and are in a continuous period of default for 90 days or more are eligible for buyout. This provision was implemented to facilitate loss mitigation assistance to borrowers at a time when TPPs were required. Consistent with its original intent, loans that complete TPPs that are consistent with the MBS Guide, Chapter 18, Part 3 §B, and Agency guidance may be bought out at the end of the TPP period.

Ginnie Mae monitors its Issuer participants and portfolios for compliance with its requirements. Non-compliance with these requirements may result in enforcement action up to and including Issuer default, as provided in the Guaranty Agreement. If you have any questions about this APM, please contact your Account Executive in the Office of Issuer and Portfolio Management.

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