FACT SHEET: NON-PERFORMING AND REPERFORMING LOAN SALE REQUIREMENTS

BACKGROUND

The Federal Housing Finance Agency (FHFA) requires sales of non-performing loans (NPLs) and re-performing loans (RPLs) by Freddie Mac and Fannie Mae (the Enterprises) to meet specific requirements. Drawing on the Enterprises' experience with NPL and RPL sales, FHFA continues to enhance the NPL and RPL sales requirements, including enhanced requirements announced in 2021.

FHFA's goal is to achieve more favorable outcomes for borrowers and communities by providing alternatives to foreclosure wherever possible. Reporting on borrower outcomes is required for servicers of loans sold as NPL and RPL. FHFA periodically publishes the *Enterprise Non-Performing Loan Sales Report* and posts the report to the FHFA public website. These reports can be found by clicking on the link below:

www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Non-Performing-Loan-Sales.aspx

NPL AND RPL SALE REQUIREMENTS

FHFA and the Enterprises have established requirements to protect borrowers with loans sold as NPL or RPL.

- **Bidder qualifications:** Bidders are required to identify their servicing partners at the time of qualification and must complete a servicing questionnaire to demonstrate a record of successful resolution of loans through alternatives to foreclosure.
- **Loss mitigation waterfall requirements:** Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Foreclosure must be the last option in the waterfall.
- **Requirements in response to COVID-19:** NPL or RPL buyers' servicers must service each loan in a manner that is consistent with the single-family forbearance requirements that would apply under section 4022 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act") as if the loans still were owned or securitized by the Enterprises. NPL or RPL buyer's servicers must adhere to any foreclosure or eviction moratorium related to the COVID-19 pandemic that has been imposed by the Federal Housing Finance Agency or by federal legislation applicable to single-family mortgage loans that are owned or securitized by the Enterprises. This requirement includes any future extensions of such foreclosure or eviction moratorium that are related to the COVID-19 pandemic.

KEY ELEMENTS OF NPL AND RPL SALE GUIDELINES

Servicers must apply a waterfall of resolution tactics that first includes evaluating borrower eligibility for a loan modification, then a short sale or a deed-in-lieu of foreclosure. Modifications must provide a benefit to the borrower and the potential for a sustainable modification and may include principal and/or arrearage forgiveness. Foreclosure must be the last option in the waterfall.

Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits.

Buyers must agree they will not "walk away" from vacant properties or enter into "contract for deed" agreements on REO properties, unless the purchaser is a non-profit.

NPL buyers and servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale. Additional provisions for RPL reporting can be found below.

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- **Modification requirements:**
  - NPL buyers' servicers are required to solicit and evaluate all borrowers (other than those with an imminent foreclosure sale date or vacant property) for a loan modification that provides a benefit to the borrower and has the potential to be sustained by the borrower over the life of the modification.
  - Servicers are required to solicit and evaluate borrowers with a mark-to-market loan-to-value ratio above 115 percent for loan modifications that include principal and/or arrearage forgiveness.
  - Modifications must not include an upfront fee or require prepayment of any amount of mortgage debt. They must either be fixed rate for the term of the modification or offer an initial period of reduced payments with limits on subsequent increases. The initial period must last for at least 5 years and interest rate increases may not exceed 1 percentage point per year thereafter.
- **No "walkaways":** If a property securing a loan is vacant, buyers and servicers may not abandon the lien and "walk away" from the property. Instead, if a foreclosure alternative is not possible, the servicer must complete a foreclosure or sell or donate the loan, including to a government or non-profit entity.
- **REO sale requirements:** Servicers are encouraged to sell properties that have gone through foreclosure and entered Real Estate Owned (REO) status to individuals who will occupy the property as their primary residence or to non-profits. As a result, for the first 20 days after any NPL that becomes an REO property is marketed, the property may be sold only to buyers who intend to occupy the property as their primary residence or to non-profits.
- **Restriction on "contract for deed:"** NPL buyers must agree that they will not enter into, or allow servicers to enter into, contract for deed or lease to own agreements on REO properties unless the tenant or purchaser is a non-profit organization.
- **Subsequent servicer requirements:** Subsequent servicers must assume all the responsibilities of the initial servicer.
- **Bidding transparency:** To facilitate transparency of the NPL and RPL sales program and encourage robust participation by all interested participants, each Enterprise has developed a process for announcing upcoming sale offerings. This includes webpages on the Enterprise's website, email distribution to small, non-profit and minority- and women-owned business (MWOB) investors, and proactive outreach to potential bidders.
- **Small pools:** The Enterprises may offer small, geographically concentrated pools of NPLs, where feasible, to maximize opportunities for nonprofit organizations and MWOBs to purchase NPLs. The Enterprises will actively market such offerings to nonprofits and MWOBs and provide additional time for buyers to complete the transaction.

- **Reporting requirements**:

    - NPL buyers' servicers, including subsequent servicers, are required to report loan resolution results and borrower outcomes to the Enterprises for four years after the NPL sale. These reports will help FHFA and the public evaluate the NPL program results and determine whether an NPL buyer and NPL servicer continue to be eligible for future sales based on pool level borrower outcomes, adjusted for subsequent market events. FHFA and/or the Enterprises provide public reports on aggregate borrower outcomes at the pool level.

    - RPL buyers' servicers must report loan resolution results and borrower outcomes to the Enterprises for four years following the RPL settlement sale. The reporting requirement terminates once a borrower has been current for 12 months.