Client Alert

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New Robust Financial Guidelines for Fannie Mae and Freddie Mac Seller/Servicers and Ginnie Mae Issuers

Overview

Regulation is like a knife: used as a scalpel, regulation can provide protections for vulnerable Americans; used as a machete, regulation can convince businesses to withdraw from sectors providing services to Americans, thus unintentionally harming people. Similar to the sharpening of a good knife, good regulation becomes scalpel-sharp by being scraped over hard questions; shedding imperfections where necessary and honing in where essential. Are recently promulgated rules governing mortgage servicers, which will not take effect until late-2023, scalpels or machetes? Agency action suggests the Federal Housing Finance Agency ("FHFA") and the Government National Mortgage Association ("Ginnie Mae") are committed to honing the minimum financial eligibility requirements governing mortgage servicers and creating a more secure environment for consumers and investors.

Over the last decade, regulated banks have exited the mortgage servicing business, selling their mortgage servicing rights ("MSRs") to nonbank servicers, including hedge funds, who are not regulated as banks. For instance, at Ginnie Mae, nonbank servicers now handle 64% of the servicing for new loans, whereas in 2011 nonbank servicers handled only 6% of Ginnie Mae servicing. Regulators have expressed concern about the role of nonbank mortgage servicers. Will they have access to credit in times of stress? Will their drive to increase returns to investors lead them to cut corners and violate the law or consumers' rights?

With these concerns in mind, the FHFA and Ginnie Mae worked together to update financial eligibility requirements for Fannie Mae and Freddie Mac seller/servicers and Ginnie Mae issuers. On August 17, 2022, they jointly announced more robust minimum financial eligibility requirements for seller/servicers and issuers, which will first take effect on September 30, 2023. While these updated requirements were adopted with the goals of maintaining the safety and soundness of Ginnie Mae and the GSEs and improving alignment among Fannie Mae, Freddie Mac and Ginnie Mae participants, they diverge as noted in the tables below.

These heightened requirements and this divergence have already caused some seller/servicers and issuers to question their ability to continue to service Ginnie Mae MSRs at current levels, particularly in light of the new Risk-Based Capital requirements discussed below. A product of Ginnie Mae's engagement with its issuer community, the recently released *Frequently Asked Questions about Ginnie Mae's Amended Eligibility Requirement* sheds additional light on Ginnie Mae's rationale for the amended eligibility requirements and foreshadows how the requirements may impact issuer's financing of MSRs after the effectiveness of the amended eligibility requirements.

The year leading up to the effective date for these new guidelines gives servicers time to plan and execute strategies for coming into compliance. Ginnie Mae has expressed that, while it believes that five quarters is sufficient time to bring affected issuers into compliance, it needs to understand issuers' strategies to ensure that compliance efforts do not cause dislocations in the MSR market. Lack of transparency in the MSR market adds to uncertainty about true value and may serve to increase price volatility.

Key Differences From Current Requirements

FHFA Requirements

The tables below demonstrate the changes to the definitions and various requirements with respect to the FHFA guidelines.

Definitions	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 1.0	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 2.0	Who the Requirement Applies to
Tangible Net Worth	Total Equity • Less Goodwill and Other Intangible Assets • Less "Affiliated Receivables" and "Pledged Assets net of associated Liabilities"	Total Equity • Less Goodwill and Other Intangible Assets • Less "Affiliated Receivables" and "Pledged Assets net of associated Liabilities" • Less Deferred Tax Assets net of associated Deferred Tax Liabilities	All Seller/Servicers
Eligible Liquidity	• Unrestricted Cash and Cash Equivalents • The following unpledged, Available-for-Sale or Held-for-Trading securities: o Agency MBS o Obligations of GSEs o US Treasury Obligations	• Unrestricted Cash and Cash Equivalents • The following unpledged, Available-for-Sale or Held-for-Trading securities: o Agency MBS o Obligations of GSEs o US Treasury Obligations • 50% of the unused portion of committed Agency servicing advance lines of credit	All Non-Depositories

Definitions	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 1.0	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 2.0	Who the Requirement Applies to
		(LOCs)	

Requirements	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 1.0	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 2.0	Who the Requirement Applies to
Minimum Tangible Net Worth	Base: $2.5 million Plus • 25 bps of UPB for total 1-4 unit residential mortgage loans serviced	Base: $2.5 million Plus • Enterprise Servicing: 25 bps • Ginnie Mae Servicing: 35 bps • PLS & Other Servicing: 25 bps	All Seller/Servicers
Capital Ratio	Tangible Net Worth/Total Assets greater than or equal to 6%	Tangible Net Worth/Total Assets greater than or equal to 6%	All Non-Depositories
Base Liquidity	3.5 bps of Agency Servicing UPB	**Enterprise Servicing** Scheduled/Scheduled: 7 bps Scheduled/Actual: 7 bps Actual/Actual: 3.5 bps **Ginnie Mae Servicing**: 10 bps **PLS & Other Servicing**: 3.5 bps	All Non-Depositories
NPL[1] Threshold	Agency NPL greater than 6% requires an incremental NPL charge	No NPL threshold	
Incremental NPL Charge	Plus an incremental 200 bp charge on Agency NPL for the portion of Agency NPL greater than 6% of Agency servicing	No incremental NPL charge	
Origination Liquidity	No origination liquidity requirement	50 bps times (Loans Held for Sale + Pipeline loans with Interest Rate Lock Commitments after Fallout Adjustments)	All Non-Depositories excluding Small Sellers
Liquidity Buffer	No liquidity buffer requirement	Enterprise Servicing: 2 bps Ginnie Mae Servicing: 5 bps	Large Non-Depositories
Capital and Liquidity Plans	No requirement to submit capital and liquidity plans	Require annual capital and liquidity plans that include MSR stress tests as part of the plan	Large Non-Depositories

Requirements	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 1.0	Fannie Mae and Freddie Mac Servicer Eligibility Guidelines 2.0	Who the Requirement Applies to
Third-Party Ratings	No third-party ratings requirement	Require third-party servicer and credit ratings as follows: • ≥$50 billion in Servicing UPB must have one primary servicer or master servicer rating, as applicable • >$100 billion in Servicing UPB must have a primary servicing rating or master servicer rating, as applicable, and one third-party long-term senior unsecured debt rating or long-term corporate family rating • > $150 billion in Servicing UPB must have a primary servicer rating or master servicer rating, as applicable, and two third-party long-term senior unsecured debt ratings or long-term corporate family ratings	Large Non-Depositories

[1] NPL is defined as non-performing loans.

Ginnie Mae Requirements

The table below demonstrates the changes to the various requirements with respect to the GNMA guidelines.

Requirements	Ginnie Mae Issuer Eligibility Guidelines 1.0	Ginnie Mae Issuer Eligibility Guidelines 2.0	Who the Requirement Applies to
Minimum Tangible Net Worth	Base: $2.5 million Plus • 35 bps of UPB for outstanding Ginnie Mae obligations	Base: $2.5 million Plus • Enterprise Servicing: 25 bps • Ginnie Mae Servicing:	All Issuers

Requirements	Ginnie Mae Issuer Eligibility Guidelines 1.0	Ginnie Mae Issuer Eligibility Guidelines 2.0	Who the Requirement Applies to
		35 bps • PLS & Other Servicing: 25 bps	
Base Liquidity	3.5 bps of Agency Servicing UPB	**Enterprise Servicing** Scheduled/Scheduled: 7 bps Scheduled/Actual: 7 bps Actual/Actual: 3.5 bps **Ginnie Mae Servicing**: 10 bps **PLS & Other Servicing**: 3.5 bps	All SF Issuer Applicants
Eligible Liquidity	• At least $1 in liquid assets, including cash, cash equivalents and AAA-rated government securities	• At least $1 in liquid assets, including cash, cash equivalents and AAA-rated government securities • Plus includes: Agency MBS, obligations of GSE and P&I advances, T&I advances, and foreclosure advances	All SF Issuer Applicants
Origination Liquidity	No origination liquidity requirement	The greater of (i) $1 million and (ii) 50 bps times (Loans Held for Sale + Pipeline loans with Interest Rate Lock Commitments after Fallout Adjustments)	Originators of more than $1 billion in UPB of any residential first mortgages
Risk-Based Capital Requirement	No RBCR requirement	At least 6% as calculated by: (Adjusted Net Worth less Excess MSRs) divided by the Risk Weighted Assets	All SF Issuer Applicants

Key Differences between FHFA and Ginnie Mae

FHFA will be requiring liquidity buffers equal to 2 basis points for GSE unpaid principal balance (“UPB”) and 5 basis points for Ginnie Mae UPB. These requirements will apply to seller/servicers classified as “large” (as defined by UPB issuance). Ginnie Mae has not announced a liquidity buffer requirement.

Allowable liquid assets under Ginnie Mae and FHFA are different as well. FHFA allows for 50% of an unused portion of a committed agency servicing advance line of credit (“LOC”) to count towards a seller/servicer’s liquid assets. By contrast, Ginnie Mae allows servicing advance receivables to count towards liquid assets but does not permit inclusion of a LOC.

Lastly, FHFA has not imposed a RBCR, while Ginnie Mae is doing so. As aforementioned, Ginnie Mae is requiring a RBCR of at least 6%, using the formula of (i) Adjusted Net Worth less Excess MRS divided by (ii) the Risk Weighted Assets. Unlike the majority of the revised guidelines, which become effective late-2023, the RBCR requirement implementation has been extended to December 31, 2024.

Key Takeaways

Some speculated at the announcement of the revised guidelines that nonbank interests in the single-family sector would cool in response. As of the end of September 2022, nonbanks serviced $5.276 trillion on the outstanding single-family MBS issued by Fannie Mae, Freddie Mac and Ginnie Mae, which was a 2.1% increase from June 2022, and raised the overall nonbank share of the Ginnie Mae MSR market to just shy of 80%, at 78.9%. So far, nonbank interest in the market remains high, particularly in the Ginnie Mae market; however, it is uncertain how the revised requirements might affect nonbank interest between now and the effective date of the changes.

While Ginnie Mae’s President Alanna McCargo has said “the overwhelming majority of Ginnie Mae issuers are compliant with these requirements today,” Ginnie Mae issuers and GSE seller/servicers should continue to engage with Ginnie Mae and the FHFA on these amended eligibility requirements during the implementation period. Notably, as a result of stakeholder feedback and evolving market dynamics, on October 21, 2022, Ginnie Mae extended the original compliance date for the RBC portion of the new requirements by one year, from December 31, 2023 to December 31, 2024. In particular, issuers and seller/servicers should continue to evaluate how their current and future MSR financing arrangements will impact their ability to comply with the eligibility requirements generally and Ginnie Mae’s risk-based capital requirement specifically. After all, handling a scalpel with continued attention and care is the surest way to avoid unintended cuts.

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