

Mortgage Loan and Property Characteristics That May Require Additional Disclosure

This Form 4098 provides guidance for determining whether an MBS Mortgage Loan requires Additional Disclosure. If a Mortgage Loan requires Additional Disclosure, the Lender must comply with all applicable terms of the Guide with respect to Additional Disclosure, including what disclosure is required at Rate Lock or Commitment. All terms used and not otherwise defined in this Guidance have the meanings set forth in the Appendix to the Guide – Glossary.

If a Mortgage Loan is expected to have any non-standard terms or characteristics, the Lender must work with the Fannie Mae Deal Team and the Lender's legal counsel to determine if Additional Disclosure is required *before* circulating the applicable Multifamily Required Trade Information for Cash or MBS Loans (Form 4097.Fixed Rate) or Multifamily Required Trade Information for ARM Cash or MBS Loans (Form 4097.ARM; collectively, "Form 4097"), or entering into a Rate Lock. Form 4097 must inform potential MBS Investors of all Additional Disclosure prior to the Lender entering into a Rate Lock. As outlined in this form, there are two types of Additional Disclosure:

- Additional Disclosure for Non-Standard Characteristics; and
- Systems Additional Disclosure.

Additional Disclosure for Non-Standard Characteristics

The Prospectus and/or accompanying Annex A for a Mortgage Loan ("Annex A") provide Additional Disclosure if, in comparison with a typical Mortgage Loan, the Mortgage Loan has non-standard characteristics that may:

- negatively affect Mortgage Loan performance;
- increase the probability of the occurrence of an event of default under the Loan Documents; or
- increase the probability of Prepayment.

For these Mortgage Loans, the Form 4097 delivered to potential MBS Investors must (i) indicate that the MBS is subject to Additional Disclosure, and (ii) specify the non-standard characteristics that will be disclosed in connection with the MBS. **The non-standard characteristics disclosed on Form 4097 must not differ significantly from those characteristics that will be disclosed at the issuance of the MBS.**

Certain non-standard characteristics may also impact MBS compliance with the Internal Revenue Code or the Trust Agreement. Any such non-standard characteristics must be discussed with the Fannie Mae Deal Team prior to entering into a Rate Lock with any MBS Investor.

Systems Additional Disclosure

Systems Additional Disclosure is required for any Mortgage Loan with characteristics that may be of interest to an MBS Investor in describing the Mortgage Loan or collateral, however those characteristics are not disclosed in the Mortgage Loan's Prospectus or Annex A. Systems Additional Disclosure will be made by placing a footnote on the appropriate page of Annex A and adding language to the Prospectus Additional Disclosure Addendum. The Lender's Commitment with Fannie Mae in the Multifamily Committing and Delivery (C&D™) system must indicate Additional Disclosure by selecting "Additional Disclosure – Yes" in order to trigger the footnote.

For these Mortgage Loans, the Form 4097 provided to potential MBS Investors prior to the MBS trade must specify the non-standard characteristics. However, since the need for an MBS footnote is due to system constraints rather than unusual features of the Mortgage Loan or the Property, **the Mortgage Loan is not considered to require Additional Disclosure for the purpose of the Form 4097, the MBS trade, or the Rate Lock** (see "Systems Additional Disclosure" section below).

Common Loan Terms or Characteristics Requiring Additional Disclosure

Below is a list of Mortgage Loan terms, characteristics, and features that generally trigger Additional Disclosure. Please note that this list is not exhaustive, but rather represents the most common Additional Disclosure scenarios.

Additional Disclosure for Non-Standard Characteristics: Loans on Properties Securing Current or Future Debt

- **Bifurcated Mortgage Loan:** A Bifurcated Mortgage Loan is a single Mortgage Loan where the aggregate amount of the debt is divided among two separate Notes having the same (i.e., *pari passu*) payment priority, with both Notes being secured by a single Security Instrument. Each Note in a Bifurcated Mortgage Loan generally has different loan terms (e.g., Maturity Date, required Prepayment Premium), which permits the Borrower to pay off a portion of the total debt during the term of the Bifurcated Mortgage Loan. An example of a Bifurcated Mortgage Loan: one Note is subject to an Interest Reduction Program (“IRP”) and the other is not.
- **Split Mortgage Loan:** A Split Mortgage Loan consists of two Mortgage Loans, a Senior Mortgage Loan and a Subordinate Mortgage Loan, that are underwritten concurrently as a single credit, but are documented as separate Mortgage Loans (i.e., each is evidenced and/or secured by a separate Loan Agreement, Note, and Security Instrument). Each Mortgage Loan in a Split Mortgage Loan may have different loan terms (e.g., Maturity Date, required Prepayment Premium), which permits the Borrower to pay off a portion of the total debt during the term of the Split Mortgage Loan.

NOTE: Additional details for delivering a Bifurcated Mortgage Loan or a Split Mortgage Loan are available in the [“Job Aid: Split, Bifurcated, and Interest Reduction Payment \(IRP\) Subsidy Loan Structures”](#).

- **Cross-Defaulted/Cross-Collateralized:** A Mortgage Loan with a provision that causes (i) a default under that Mortgage Loan due to the occurrence of a default under a second Mortgage Loan, and/or (ii) the Property securing that Mortgage Loan to also secure a second Mortgage Loan requires Additional Disclosure as provided by the [“Job Aid: Data Guidance for Cross-Defaulted and Cross-Collateralized Mortgage Loans”](#). Any cross-defaulted and/or cross-collateralized Mortgage Loan that allows for the release of one of the Properties or which contains a “due on sale” clause requires Additional Disclosure.
- **Mezzanine Financing or Preferred Equity:** Mortgage Loans with (i) Mezzanine Financing permitted under the Loan Agreement, including third party or DLA Mezz, and which is secured by direct or indirect equity interests in the Borrower, or (ii) Preferred Equity that is identified as a Pre-Review Mortgage Loan in the Multifamily Underwriting Standards (Form 4660). Data for a Mortgage Loan with Hard Preferred Equity should be entered in the Mezzanine Financing fields in C&D. This data will be disclosed in the Mezzanine data fields on Annex A, and in a footnote stating it is Hard Preferred Equity.
- **Senior Third-Party Debt:** Mortgage Loans with non-Fannie Mae financing secured by a Lien senior to the Mortgage Loan (e.g., state or federal loans or grants with senior Liens on the Property).

NOTE: *Subordinate debt that is currently in place or is being placed on the Property concurrently with the Mortgage Loan should not be submitted as Additional Disclosure. Data for such debt should be reflected in C&D in the “Additional Debt” section on both the Commitment and Loan pages. A subset of this data will then be disclosed on Annex A. “Soft subordinate debt” is not subject to these C&D requirements. “Soft subordinate debt” is described more fully on the **DSCR Data: C&D Instructions** link on the Commitment and Loan pages in C&D. Questions regarding “soft subordinate debt” should be directed to the Multifamily Acquisitions team before data is entered in C&D.*

Additional Disclosure for Non-Standard Characteristics: Prepayments

- **Additional Non-Real Estate Collateral:** Mortgage Loans that are supported by a Letter of Credit or other additional collateral that secure specific performance by the Borrower and where the proceeds of the Letter of Credit or additional collateral may be used to pay down the Mortgage Loan if the Borrower fails to perform as required (e.g., a Mortgage Loan where an Achievement Agreement provides for a pay down of the Unpaid Principal Balance (UPB) if specific performance benchmarks at the Property are not met).
- **Partial Prepayment:** The Loan Documents permit the Borrower to make a voluntary partial Prepayment during the term of the Mortgage Loan (e.g., a partial Prepayment is permitted after a partial release of collateral).

Additional Disclosure for Non-Standard Characteristics: Property-Related Issues

- **Commercial Condominium Project:** The Property consists of one or more multifamily housing units of a condominium project, together with any related facilities such as parking areas or recreation facilities, with the remaining units being used for purposes other than multifamily housing (i.e., retail sales). The remaining units are typically not included in the Property. A standard condominium or a fractured condominium does not require Additional Disclosure unless it is also a commercial condominium.
- **Due-on-Sale and Related Property Transfer Restrictions:** The Loan Documents contain an additional covenant or event of default providing that the Mortgage Loan will be in default or must be paid in full upon the occurrence of a specified event such as:
 - the violation of a covenant requiring the Borrower, or an Affiliate of the Borrower, to acquire an adjacent or related Property (or a controlling interest in the entity owning such Property) so that the adjacent or related Property (or the controlling interest in the entity owning such Property) is not acquired by a third party that is not an Affiliate of the Borrower; or
 - the purchase of the Property (or a transfer of a controlling interest in the Borrower or in a Key Principal) by a third party is permitted only if the third party also simultaneously purchases an existing or future phase of the Property or a related Property (or acquires a controlling interest in the entity that owns the phase or Property); a failure to comply with the restrictions on sale or transfer results in acceleration of the Mortgage Loan.
- **Future Release, Condemnation, or Property Not Security:** Mortgage Loans secured by a Property where a portion of the Property is:
 - expected to be released after the MBS Issue Date (e.g., a partial release where the Borrower plans to sell a portion of the undeveloped area of the Property);
 - scheduled to be condemned (e.g., a portion will be taken by a governmental agency through eminent domain); or
 - not available as security for the Mortgage Loan.
- **Impairment on Use:** A special circumstance exists related to the use or operation of the Property that may negatively affect the performance of the Property or increase the likelihood of Prepayment of the Mortgage Loan (e.g., successful operation of the Property requires continued access to a private water source that is not under the control of the Borrower).
- **Insurance Related Partial Prepayment:** The Lender agrees at the Mortgage Loan Origination Date to use condemnation or insurance proceeds to pay down the Mortgage Loan, rather than to repair or restore the damaged Property.
- **Participation Interests:** Any MBS Pool that holds a less than 100% participation interest in a Mortgage Loan.
- **Pending Litigation:** Significant litigation is ongoing that may have a material adverse effect on the future operations and performance of the Property or the Borrower, or materially increase the likelihood of an event of default under the Loan Documents.
- **Property Valuation:** An Underwriting Value used by the Lender and approved by Fannie Mae that differs from the methodology for determining Property value as required by the Guide.
- **Seniors Housing Master Operating Lease:** The Seniors Housing Property is subject to a master operating lease that also covers properties outside the MBS Pool, and an event of default under the master operating lease is an event of default under the Loan Documents.

Additional Disclosure for Non-Standard Characteristics: Other

- **Mortgage Loan Delivered in an MBS Pool without REMIC Election:** If Fannie Mae has approved a Mortgage Loan for Delivery that fails to satisfy the requirements for making a REMIC election on the related MBS, Additional Disclosure is required to specify that a REMIC election will not be made upon securitization and that the MBS will be ineligible for re-securitization. For example, a Mortgage Loan is ineligible to make a REMIC election if: (i) the Lender cannot make the required Delivery representation in the Guide; or (ii) the aggregate UPB of a Seniors Housing Mortgage Loan exceeds 100% of the real estate value of the Property. In determining if the Mortgage Loan qualifies for a REMIC-eligible MBS, the value attributed to the real estate must only include value attributed to land and improvements, and must exclude all value attributed to goodwill, business value, intangibles, and/or furniture, fixtures and equipment in the Appraisal. **(NOTE:** *Fannie Mae will not generally approve a Mortgage Loan for Delivery that is not eligible to make a REMIC election.*)
- **Full Recourse Mortgage Loan without REMIC Election:** The Mortgage Loan is approved for Delivery despite failing to satisfy the requirements for making a REMIC election on the related MBS, and is either (i) full recourse to the Borrower, or (ii) includes a full or partial Payment Guaranty.
- **Conflict Mortgage Loans (i.e., Lender's Equity Interest):** The Mortgage Loan is a Conflict Interest Mortgage Loan. The Lender must disclose whenever the Lender or an Affiliate of the Lender has a controlling or a non-controlling interest in the Borrower. Disclosure is required without regard to the amount of ownership (i.e., there is no *de minimus* exception).
- **LIHTC Investment:** Fannie Mae is a LIHTC investor and owns, either directly or indirectly, an equity interest in the Borrower. Disclosure is required without regard to the amount of ownership (i.e., there is no *de minimus* exception).
- **MBS as Bond Collateral:** An MBS includes a Mortgage Loan secured by a Property that also collateralizes a Bond under an affordable housing program, and issues related to the performance of the parties under the Bond transaction may cause an early termination of the MBS.
- **Multiple Series Limited Liability Company:** A Borrower is formed under a Series LLC statute.
- **Near Stabilized Property:** A newly constructed or recently rehabilitated Property, with all construction or rehabilitation complete, which is expected to achieve Stabilized Residential Occupancy and the applicable required Underwritten Debt Service Coverage Ratio within 120 days (or other period approved by Fannie Mae) after the Mortgage Loan Origination Date.
- **Non-Standard Events of Default and/or Personal Recourse Triggers:** The Loan Documents include one or more events of default that are not standard (e.g., the failure to maintain specific financial covenants, such as net worth and liquidity benchmarks; the failure to comply with the terms of an environmental indemnity agreement; litigation or arbitration or any action or event related to litigation or arbitration), as well as events of default or non-standard covenants that trigger partial or full personal recourse to the Borrower. (The above examples are not intended to be a complete list of the non-standard events of default that require Additional Disclosure.)
- **Rent or Income Restriction on a Non-MAH Property:** The Property is subject to a rent or income restriction agreement with an associated event of default, but the Lender has indicated the Property as "Not MAH" under "Affordable Housing Type" in C&D.
- **Operating Deficit Guaranty:** Substantial rehabilitation is planned at the Property, and an operating deficit Guaranty is required.
- **Revenue or Expense Changes (e.g., Tax Abatements):** Additional Disclosure comments must include the length of the Tax Abatement and whether it eliminates or reduces the tax.
 - The Property benefits from a state or local tax abatement or a payment in lieu of taxes (PILOT)

arrangement, and maintaining the tax abatement requires compliance with a state or local ordinance, the tax code, etc., and may require an annual application. (The Loan Documents generally include covenants requiring the Borrower to maintain the tax abatement with the failure of the Borrower to do so constituting an event of default.)

- The Property receives additional revenue from a source other than operations of the Property, and the revenue is a primary or significant contributing source of income needed to provide debt service for the Mortgage Loan. This additional revenue or reduced expense may or may not be considered in the underwriting of the Mortgage Loan, but the term of the agreement/arrangement providing the revenue is shorter than the term of the Mortgage Loan (e.g., significant assistance is provided under an agreement for a federal or state program).
- **Transfer/Assumption with Economic Test:** The Loan Documents specify that a transfer of the Property (or a controlling interest in the Borrower or Key Principal) or an assumption of the Mortgage Loan will be approved only if a DSCR, LTV, or other economic test is met.

Systems Additional Disclosure

For Systems Additional Disclosure, the Commitment in C&D will need to indicate Additional Disclosure by selecting “Additional Disclosure – Yes”. However, the Lender does not need to mark the Mortgage Loan as requiring “Additional Disclosure” for marketing purposes. Form 4097 should include these non-standard characteristics.

- **Declining Prepayment Premium, Other Year Schedule and Other Prepayment Premium:**
 - Mortgage Loans delivered through **C&D:** Mortgage Loans committed *on or after September 1, 2019* that are fixed or variable (including certain Hybrid ARMs) will no longer use “Other Prepayment Premium” when Graduated Prepayment and Declining Prepayment Premium schedules are not available as allowable values in dropdown lists. “Declining Prepayment, Other Year Schedule” in C&D should now be used in these cases. Additional Disclosure Indicator “Yes” should be selected and Additional Disclosure Comments should note “Declining Prepayment, Other Year Schedule”.
 - Loans delivered through **MSFMS:** The Mortgage Loan is a fixed or variable (including certain Hybrid ARM) rate Mortgage Loan and “Other Prepayment Premium” is selected as the Prepayment Protection Type in the MSFMS Acquisition system only. “Other Prepayment Premium” option is selected when Graduated Prepayment and Declining Prepayment Premium schedules are not available as allowable values in dropdown lists.

Please refer to “[Job Aid: Entering Data for Fixed and Variable Rate Mortgage Loans with Graduated Prepayment Premium Schedule](#)” to see examples.

- **MFlex:** The Mortgage Loan is an MFlex Mortgage Loan, unless Fannie Mae's Multifamily Disclosure Operations Team has informed the Lender that Additional Disclosure is no longer required for the Lender's standard MBS deliveries.