

Job Aid: Green Rewards – Legal Review for a Solar Photovoltaic System

This Job Aid: (i) provides information on the Pre-Review process for a Green Rewards Mortgage Loan that includes a solar photovoltaic (Solar PV) system as one of the Energy and Water Efficiency Measures (Efficiency Measure) selected by the Borrower for installation; (ii) highlights the legal issues that Lenders should consider when evaluating a solar photovoltaic system; and (iii) outlines the documents that will need to be reviewed by the Lender and its outside counsel through the Mortgage Loan origination and delivery process, as well as during for the asset management of the Mortgage Loan.

Why does selecting Solar as an Efficiency Measure require Pre-Review for the Green Rewards Mortgage Loan?

Installing a solar photovoltaic system at a Property as an eligible Efficiency Measure is a great way to reduce energy consumption from the grid, reduce operating expenses for the Borrower and tenants, and meet the Green Rewards Mortgage Loan requirements for a 30% total combined reduction in energy and water consumption (including the mandatory 15% reduction in energy consumption).

Although a Solar photovoltaic system provides meaningful energy cost savings, it also comes with additional expenses, asset management considerations, and a range of agreements with the local utility, jurisdiction, and solar installer. These ancillary solar agreements require additional analysis to protect the interests of the Borrower, Lender, and Fannie Mae.

I have a Borrower interested in installing a solar photovoltaic as a Green Rewards Mortgage Loan Efficiency Measure. Now what?

A Borrower that has independently decided to pursue solar would typically have already obtained an independent assessment from a solar developer/installer, and wants to finance the installation as one of the required Efficiency Measures. Or perhaps a Borrower interested in the possibility of qualifying for a Green Rewards Mortgage Loan has learned about the solar savings potential from the High Performance Building (HPB) Report and wants to pursue this option as an eligible Efficiency Measure. In either case, the following steps must be followed to initiate the Pre-Review process:

- Lender must add a Pre-Review waiver to DUS Gateway™:
 - Lender Delegated?: No
 - Category: Pre-Review (4660)
 - Sub-Category: Products and Features
 - Descriptor: Green Rewards (Solar)
- Lender must Chatter the Fannie Mae Deal Team to alert the Fannie Mae Green Team and the assigned Green Credit lead.
- Lender must order the High Performance Building Report and Technical Solar Assessment (both the PDFs and Excel files (Form 4099.H and Form 4099.I) and upload all documents to DUS Gateway™ in



Deal Docs at least 10 days prior to Rate Lock. For more information see the Guide and Fannie Mae Form 4099 for instructions.

- Fannie Mae’s Green Team, the assigned Green Credit lead, and the Fannie Mae Deal Team will work closely with the Lender to make sure that a solar photovoltaic installation is a viable option.
- A Pre-Review waiver must be entered if the Borrower would like to select solar as an eligible Efficiency Measure **before** the Lender enters the Commitment into C&D.

NOTE: A Green Rewards Mortgage Loan that selects solar as an eligible Efficiency Measure is not eligible to use the Rate Lock (SRL) option.

What legal issues should be considered by the Lender and its outside counsel when evaluating a solar photovoltaic system?

A range of legal issues should be considered by the Lender and its outside council when evaluating the installation of a solar photovoltaic system, including, but not limited to:

- Design, Installation and Maintenance: The Lender must ensure that the design, installation and operation, and maintenance plan for the solar photovoltaic system align with Fannie Mae’s requirements contained within the Guide, Form 4099, and Form 6264 – Modifications to Multifamily Loan and Security Agreement (Green/Solar Loan Modification).
- System Ownership: To be an eligible Efficiency Measure for a Green Rewards Mortgage Loan, the solar photovoltaic system (and all associated equipment, such as a battery storage system) must be directly owned by the Borrower. Ownership of the solar photovoltaic system by a limited partnership of which the Borrower is the general partner would not qualify.
- Additional Financing: Any financing for the solar photovoltaic system other than the proceeds of the Mortgage Loan or the use of any federal or state tax credits must be reviewed and approved by the Lender. Federal or state tax credits may be used to finance the solar photovoltaic system or battery storage system, provided the Borrower maintains full ownership of the system.
- Renewable Energy Certificates (REC) or Solar Renewable Energy Certificates (SREC): The Lender must confirm that the Borrower has not entered into a contract or financing agreement for REC/SRECs that grants another party any interest in the solar photovoltaic system or battery storage system.
- Public Utility Status: The Lender must ensure that actions taken by the Borrower and the agreements to be entered into by the Borrower do to not cause the Borrower to be characterized as an electric utility subject to regulation by any Governmental Authority.

Ancillary Solar Documents that require legal review and/or Lender approval

A broad range of documents related to the installation of a Solar PV System will require legal review and/or approval. This job-aid is intended to provide general guidance; however, the timing for document review and the documents requiring review will be dictated by the characteristics of the Solar PV System and jurisdiction in which the Property is located.

1. System Design and Installation. The Lender must review and approve:



- all engineering, procurement, and construction (EPC) contracts for the design and installation of the solar photovoltaic system and/or battery storage system (**NOTE:** Although the system design should be substantially completed prior to the Mortgage Loan Origination Date, based on the selected installer and permitting process, minor modifications may still be needed. The Lender must confirm the solar photovoltaic system contracted for by the Borrower complies with the specifications in the HPB Report, Form 4099.H., Technical Solar Report, and Form 4099.I);
- all agreements to ensure that the solar photovoltaic system and/or battery storage system complies with local utility regulations and is capable of producing electricity for consumption on the Mortgage Property, and where applicable, delivery to the utility grid, including, but not limited to:
 - executed interconnection agreement with local distribution company or utility;
 - executed net metering agreement with local distribution company or utility, if applicable;
 - any notice of commercial operation or in-service date provided to the Borrower by the developer, engineering contractor, or operator of the solar photovoltaic system and/or battery storage system; and
 - certification from the developer, engineering contractor, or operator that the Solar PV system and/or battery storage system is mechanically complete and ready to begin operation, which certification should state, at a minimum, that:
 - all systems required to operate and monitor the Solar PV system and/or battery storage system have been installed;
 - all materials and equipment for the Solar PV system and/or battery storage system have been installed;
 - all the equipment and systems can be operated in a safe and prudent manner and have been installed in a manner that does not void any equipment or system warranties; and
 - all required permits and approvals have been obtained and final inspections have been completed, including electrical and building code inspections.

2. System Financing. The Lender must review and approve:

- all financing agreements to ensure that at all times during the Mortgage Loan term, no Person other than Borrower shall have any possessory ownership or other interest in the Solar PV system and/or battery storage system, and no Person shall be granted an option, right of first refusal, or right of first offer (except as required by applicable law) to purchase the solar photovoltaic system or battery storage system, or any interest in the solar photovoltaic system;
- all agreements related to Renewable Energy Certificates or Solar Renewable Energy Certificates; and
- any financing for the solar photovoltaic system and/or battery storage system obtained by Borrower, other than from the proceeds from the Mortgage Loan agreement.



3. Asset Management.

- The Lender must review the insurance coverage for the Solar PV system to confirm that:
 - The Solar PV System, including any battery storage system, is covered for hazards, catastrophic risk, and general liability as required by the Loan Agreement under either the Borrower's standard insurance policy or any rider obtained by the Borrower; and
 - if any portion of the Solar PV system and/or battery storage system are located in a Special Flood Hazard Area, the Borrower has obtained adequate flood insurance.
- The Lender must review and approve any operations and maintenance (O&M) agreement to specify each party's obligations regarding operating, maintaining, and monitoring the Solar PV system and/or any battery storage system. (**NOTE:** For a Solar PV systems over 500 kilowatts, the Lender must confirm that a performance guaranty, executed by the party responsible for the design and installation of the Solar PV system, obligates the service provider to operate and maintain the Solar PV facility to achieve the expected annual output and will reimburse the Borrower if the projected kilowatt hours are not produced.)

The complexities involved in the design, installation, and commissioning of the Solar PV system will require the Lender to retain counsel experienced in reviewing solar contracts and agreements. The form and substance of the solar interconnection agreements will vary greatly depending on the Property jurisdiction, the Lender should consider retaining local counsel who is familiar with the regulatory laws and regulations of the Property jurisdiction.