



# Multifamily Mortgage Business Lender Letter 20-07

April 23, 2020

To: Multifamily Lenders

From: Chris Flynn, Vice President for Multifamily Credit, Underwriting  
Larry LaGrone, Vice President for Portfolio Risk Management

Subject: Lender Letter 20-07 – CARES Act: Paycheck Protection Program

## Highlights

Effective April 23, 2020, for Borrowers wanting to apply for unsecured loans under the Small Business Administration’s new Paycheck Protection Program, Fannie Mae is providing:

- for Mortgage Loans not yet originated, increased delegation under [Lender Letter 17-12 – Loan Document Modification Process](#);
- for Portfolio Mortgage Loans, guidance for the approval of a Paycheck Protection Program loan;
- new forms of a Modifications to Loan Agreement (Form 6269) and Amendment to Loan Agreement (Form 6642) available for use for an approved Paycheck Protection Program Loan.

## Paycheck Protection Program

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorized the Small Business Administration (SBA) to establish a new loan program to assist small businesses adversely impacted by the COVID-19 emergency. Section 1102 of the CARES Act temporarily permits the SBA to guarantee 100% of loans under a new program titled the “Paycheck Protection Program”, and Section 1105 of the CARES Act provides for forgiveness of up to the full principal amount and all interest on qualifying loans guaranteed under the program.

The Borrower and its counsel are solely responsible for determining whether the Borrower qualifies for the Paycheck Protection Program. Lenders should not be advising Borrowers regarding the qualifications.

This Lender Letter ONLY applies to unsecured loans under the Paycheck Protection Program (PPP Loans) if:

- the debtor is also the Borrower of a Fannie Mae Mortgage Loan; or
- the debtor is an Affiliated Property Operator of a Seniors Housing Mortgage Loan, as discussed below.

If the PPP Loan is to any other Borrower Affiliate, no further action is required.



## New Mortgage Loan Originations

A request by a Borrower to apply for a PPP Loan does not by itself make the transaction a Pre-Review Mortgage Loan.

### ■ Credit Considerations

For delegated Mortgage Loans (as provided below) and Pre-Review Mortgage Loans, the Lender's Transaction Approval Memo and, if required, its Pre-Review submission, should provide details of the PPP Loan, including:

- the proposed amount of the PPP Loan, which should not be material, and must be less than 10% of the original UPB of the Mortgage Loan;
- the repayment obligations of the PPP Loan, if the PPP Loan ultimately fails to qualify for forgiveness; and
- whether repayment of the PPP Loan would negatively affect the Borrower's liquidity in any material respect or its ability to repay the Mortgage Loan.

### ■ Delegated Modification of Loan Agreement

The terms of the Paycheck Protection Program should effectively limit the PPP Loan proceeds available to a Borrower. If the Lender determines the amount of the PPP Loan available to the Borrower is immaterial and that repayment of the loan will not negatively affect the Borrower's liquidity in any material respect or its ability to repay the Mortgage Loan, the Lender is delegated the authority under [Lender Letter 17-12](#) to modify Section 11.02(c) of Form 6001.NR (or the corresponding Section 11.02(d) of Form 6001.NR.SRS).

Changes made to Section 11.02(c) of Form 6001.NR or Section 11.02(d) of Form 6001.NR.SRS for a PPP Loan will be deemed a "Delegated Modification", provided the modified sections comply with the following requirements:

- permit an unsecured PPP Loan as additional indebtedness;
- require the amount of the PPP Loan:
  - not be material; and
  - be less than 10% of the original UPB of the Mortgage Loan;
- include the following Borrower covenants/provisions related to the PPP Loan:
  - All proceeds of the PPP Loan must be used directly for the benefit of the Property and for authorized purposes that, under the CARES Act and the documents evidencing the PPP Loan, would allow 100% of the PPP Loan principal and interest to be forgiven;
  - Borrower covenants to use its best efforts to obtain forgiveness of 100% of the principal of, and interest on, the PPP Loan; and
  - Borrower will indemnify and hold the Lender harmless for, from and against any and all actions, suits, claims, demands and liabilities arising under the PPP Loan.



Newly originated Mortgage Loans with an approved PPP Loan must be documented using the new Modifications to Multifamily Loan and Security Agreement (Paycheck Protection Program Loan) (Form 6269), which is now available on the [Loan Documents page](#) of Fanniemae.com.

If the Lender determines the amount of PPP Loan available to the Borrower is material or greater than 10% of the original UPB of the Mortgage Loan, no additional Credit considerations are required, but the changes to Section 11.02 must be submitted to Fannie Mae for approval as a non-delegated Loan Document modification waiver. (The Lender must still determine whether the PPP Loan is material even if the PPP Loan amount is less than 10% of the UPB.)

#### ■ **Additional Disclosure**

Additional Disclosure of the unsecured PPP Loan is not required, unless the Lender is aware, as of the Mortgage Loan Origination Date, that the intended use of the proceeds of the PPP Loan makes it unlikely that the PPP Loan will be forgiven under the terms of the CARES Act and Paycheck Protection Program.

#### **Portfolio Mortgage Loans**

Fannie Mae hereby approves any request by a Borrower for approval to apply for and receive an unsecured PPP Loan under the Paycheck Protection Program, provided that the Servicer confirms:

- the amount of the PPP Loan is both not material and less than 10% of the outstanding UPB of the Mortgage Loan;
- that any required repayment of the PPP Loan will not negatively affect the Borrower's liquidity in any material respect or its ability to repay the Mortgage Loan; and
- the Borrower will covenant to the Lender:
  - that all proceeds of the PPP Loan will be used directly for the benefit of the Property and for authorized purposes that, under the CARES Act and the documents evidencing the PPP Loan, would allow 100% of the PPP Loan principal and interest to be forgiven;
  - to use its best efforts to obtain forgiveness of 100% of the principal of, and interest on, the PPP Loan; and
  - to indemnify and hold the Lender harmless for, from and against any and all actions, suits, claims, demands and liabilities arising under the PPP Loan.

If the Servicer can confirm the above requirements have been satisfied, then the request is automatically approved by Fannie Mae and the Servicer should document the Fannie Mae approval in its Servicing File. If the Borrower has requested forbearance per [Supplement 20-05](#), the Servicer must add a comment to the existing Forbearance Borrower Request in the Multifamily Asset Management Portal (MAMP), and also include the proposed amount and repayment obligations of the PPP Loan (if the PPP Loan does not ultimately qualify for forgiveness) in the comment section. No additional documents should be added to the existing Forbearance Borrower Request. If the Servicer's review cannot confirm the above requirements have been satisfied, then it must be submitted for Fannie Mae approval through the MAMP as a non-delegated Subordinate Financing Borrower request.



In addition, the Servicer is delegated the authority to:

- determine whether the approval of the PPP Loan requires an amendment to the Multifamily Loan Agreement; and
- document any amendment deemed necessary by the Servicer, containing the required representations above and no other changes or modifications to the terms of the Loan Documents, in any form the Servicer determines to be legally enforceable.

While not required, a suggested form of Amendment to Multifamily Loan and Security Agreement (Paycheck Protection Program Loan) (Form 6642) is now available on the [Loan Documents page](#) of Fanniemae.com. Any Loan Agreement Amendment determined to be necessary by the Servicer must be submitted to [Multifamily Asset Management](#) for execution by Fannie Mae.

### **Suggested Loan Document Forms**

Form of a suggested Modifications to Loan Agreement (for new originations) and an Amendment to Loan Agreement (for Portfolio Mortgage Loans) for use with a PPP Loan will be published shortly with a subsequent Lender Letter.

### **Effective Date**

The Lender Letter is effective on April 23, 2020 for all Mortgage Loans.

### **Contact Us**

If you have questions regarding this Lender Letter, please contact:

- your Fannie Mae Deal Team for any Mortgage Loan currently being underwritten; or
- [Multifamily Asset Management](#) for any Portfolio Mortgage Loan.

### **Associated Documents**

The following new form Loan Documents are available on the [Loan Documents Page](#) of fanniemae.com.

- Modifications to Multifamily Loan and Security Agreement (Paycheck Protection Program Loan) (Form 6269); and
- Amendment to Multifamily Loan and Security Agreement (Paycheck Protection Program Loan) (Form 6642).