



Multifamily Mortgage Business Lender Letter 22-04

August 16, 2022

To: Multifamily Lenders

From: Charles Ostroff, Senior Vice President – MF Chief Credit Officer
Rob Levin, Senior Vice President – MF Chief Customer Officer
Te-Mika Warner, Senior Director & Deputy General Counsel

Subject: Loan Document Modifications

HIGHLIGHTS

Effective for all Mortgage Loans with a Commitment Date on or after September 1, 2022, Fannie Mae is updating its Loan Document modification process to increase delegation for Tier 3 transactions that require only Fannie Mae business and credit approval and to clarify requirements for existing delegations.

Primary Changes

This Lender Letter updates the types of Loan Document modifications delegated to Lenders (**Delegated Modifications**) and those that require our approval (**Non-Delegated Modifications**), as well as the rules and process around each. Capitalized terms, unless we specify otherwise, are as defined in the Multifamily Selling and Servicing Guide (**Guide**) or the Series 6000 Loan Document forms published on our website, as applicable.

Effective Date

This letter is effective for all Mortgage Loans with a Commitment Date on or after September 1, 2022, but may be used immediately. You may follow Lender Letter 17-12 for transactions with a Commitment Date prior to September 1, 2022.

Superseded Communications

Except for the transactions above, this Lender Letter supersedes Lender Letter 17-12.

General Information

Application

This letter applies to modifications to our published Series 6000 Loan Documents (or those approved or authorized for use by us or our outside counsel for a particular Mortgage Loan) for new Mortgage Loans and Assumptions. Use of any documents other than our Loan Documents requires our approval.



General Rules

When making or requesting modifications pursuant to this letter, you must:

- act in our and your best interests as a creditors' rights advocate (consistent with the prudent underwriting standards contained in the Guide),
- demonstrate that each modification is appropriate for the specific Mortgage Loan, Mortgaged Property and Borrower (including its organizational structure, if applicable), and
- properly flag modifications that require Additional Disclosure (per the Guide and Form 4098) for Delegated Modifications and Non-Delegated Modifications.

Exception

This letter does not apply to **Credit Facility** transactions, which are negotiated by our outside counsel and subject to a separate approval process.

Delegated Modification Rules

NOTE: Unless expressly prohibited below, Delegated Modifications may modify Restricted Documents and Restricted Provisions

Types of Delegated Modifications

The following are the types of modifications delegated to you and the rules/requirements (**Delegation Rules**) for the use of each delegation type.

DELEGATION TYPE	DELEGATION DESCRIPTION
Annotated Document Delegation	Modifications that are consistent with: <ul style="list-style-type: none"> • the latest version of the Annotated Loan Agreement (including any Addenda), and • any other annotated Loan Documents published by us
Tier 3 or 4 Transfer Delegation	Modifications for any ownership interest Transfers permitted under <u>Exhibit A</u> . The Mortgage Loan must be non-recourse, and Tier 3 or 4
Tier 3 or 4 Business and Credit Delegation	Modifications to the business/credit terms: <ul style="list-style-type: none"> • the Mortgage Loan must be Tier 3 or 4 • modifications may not be made to a Restricted Document or Restricted Provision (See <u>Exhibit B</u>)
Supplemental Mortgage Loan Delegation	Modifications to Supplemental Mortgage Loans that are consistent with the modifications previously approved for the related first lien Note: if we approve Non-Delegated Modifications on the Supplemental Mortgage Loan, you are permitted to make the same modifications to the related first lien using this delegation, provided the modifications comply with all other provisions of this Lender Letter



DELEGATION TYPE	DELEGATION DESCRIPTION
Approved Template Delegation	Modifications we have approved per a Sponsor template: <ul style="list-style-type: none"> the Mortgage Loans must be closed on the most recent version of our published forms if any term in an approved template is inconsistent in any material respect with the most recent published version of the applicable Loan Document, then such modification must be submitted as Non-Delegated the Sponsor template must be uploaded to DUS Gateway
Official Unpublished Loan Document Delegation	Allows the use of an “Official Unpublished Document” provided by us for <u>that specific</u> Mortgage Loan
Express Delegation	Modifications reflecting certain business terms that we require or permit in writing for <u>that specific</u> Mortgage Loan per a transaction approval memo or as reflected in DUS Gateway. For example, changes to fee amounts that we approve such as Review or Transfer Fees in Article 11 of the Loan Agreement. Note: modifications may not be made to a Restricted Document or Restricted Provision (See <u>Exhibit B</u>)
Counsel Approved Delegation	Modifications or documents approved or provided by our counsel, including our outside counsel, for <u>that specific</u> Mortgage Loan
Discretionary Delegation	Non-substantive or immaterial changes such as: <ul style="list-style-type: none"> Wordsmithing or clarifications of existing language, or changes made solely to comply with the recordation or other technical requirements of the Property Jurisdiction

Submission of Delegated Modifications

All delegated loan modifications must be submitted prior to closing, per the below:

Loan Type	Required Form	Where to Submit
New Mortgage Loans	Delegated Modification Template Memo	DUS Gateway
Assumptions	Transaction Approval Memo (must properly identify, describe and support the delegated modification)	MAMP



Non-Delegated Modification Rules

You must submit a modification as **Non-Delegated**, if the modification:

- affects the non-recourse or recourse nature of the Mortgage Loan;
- permits a change in the collateral;
- increases Lender discretion (e.g., changing sole discretion to reasonable discretion);
- creates new servicing obligations;
- affects Lender’s rights or remedies in any material respect; or
- limits Lender’s ability to comply with its ongoing reporting obligations relating to MBS disclosure.

Types of Non-Delegated Modifications

All loan document modifications that are not Delegated Modifications are Non-Delegated Modifications and require approval by Fannie Mae.

See the table below for Non-Delegated Modification requirements.

MODIFICATION TYPE	REQUIRED APPROVAL	HOW TO SUBMIT
Modifications that: <ul style="list-style-type: none"> • do not modify a Restricted Document or Restricted Provision, and • do not conflict with the Delegation Rules 	Only Fannie Mae business/credit approval is required	For new Mortgage Loans: <ul style="list-style-type: none"> • Use the Non-Delegated Modification Memo template • Identify the approval as “Business/Credit Approval only” in DUS Gateway For Assumptions: <ul style="list-style-type: none"> • Identify the approval as “Business/Credit Approval only” in MAMP
Modifications that: <ul style="list-style-type: none"> • modify a Restricted Document or Restricted Provision, or • conflict with the Delegation Rules 	In addition to Fannie Mae business/credit approval, Fannie Mae legal approval is required	For new Mortgage Loans: <ul style="list-style-type: none"> • Use the Non-Delegated Modification Memo template • Identify the approval as “Business/Credit and Legal Approval” in DUS Gateway For Assumptions: <ul style="list-style-type: none"> • Identify the approval as “Business/Credit and Legal Approval” in MAMP



Submission of Non-Delegated Modifications

As set forth above, all Non-Delegated Modifications must be submitted using the [Non-Delegated Modification Memo template](#) in accordance with the below:

Loan Type	Submission Timing	Where to Submit
New Mortgage Loans (including Supplemental Mortgage Loans made in connection with Assumptions)	Prior to Rate Lock	DUS Gateway
Assumptions	Prior to closing	MAMP

Reminder: If Non-Delegated Modifications are submitted after Rate Lock, you undertake the risk that we may decline some or all of such modifications, and you may not use such denial as a defense to your obligation to originate the Mortgage Loan per the Commitment (at the Rate Lock amount).

Non-Delegated Modifications – Prohibitions

Non-Delegated Modifications for Mortgage Loans less than or equal to the maximum amount set out in the Guide definition of Small Mortgage Loan are not permitted. Limited exceptions may be considered under compelling circumstances, such as for:

- certain borrower relationships;
- Multifamily Affordable Housing transactions;
- transactions that are part of a Bulk Delivery portfolio; or
- critical issues that are essential for a particular Mortgage Loan.

If an exception applies, you must contact your Deal Team for approval prior to submitting the modification request.

Engagement of Fannie Mae Outside Counsel

In our discretion, we may engage outside counsel, at Borrower’s expense, for any Mortgage Loan, including for modifications to the Environmental Indemnity Agreement.

We are particularly likely to engage outside counsel for Mortgage Loans with Non-Delegated Modifications relating to:

- transactions involving a complex Borrower structure (including those with certain types of Mezzanine Financing or Preferred Equity);
- transactions that include Non-Delegated Modification Memos of 50 pages or more;
- ownership interest Transfer modifications that require extensive analysis;
- Section 4.01(g) or 4.02(b) of the Loan Agreement (Economic Sanctions, Anti-Money Laundering and Anti-



Corruption);

- Section 4.01(m) or 4.02(e) of the Loan Agreement (ERISA);
- Assumptions, regardless of Mortgage Loan size;
- transactions involving complex Multifamily Affordable Housing (MAH) structures;
- transactions involving multiple layers of subordinate debt;
- transactions involving complex Ground Lease structures;
- PILOT Mortgages in NY (and possibly other jurisdictions) and all deals with New York HDC, HFA, HPD and other NY agencies;
- Reduced Occupancy Affordable Rehabilitation (ROAR) transactions;
- transactions with a leased Solar Photovoltaic System; or
- Rental Assistance Demonstration (RAD) portfolio transactions.

We will advise you prior to any engagement and provide a fee estimate so that the Borrower may determine whether to proceed with the modification request.

If we retain outside counsel, your counsel will continue to have primary responsibility for documenting the transaction but will submit the relevant documentation to our outside counsel for approval.

Legal Opinions

Due Authorization Opinion

A “due authorization” opinion from Borrower’s counsel is required for all Mortgage Loans except Small Mortgage Loans, and for all Assumptions.

For Small Mortgage Loans, you must review the organizational and related documents of Borrower (and any other applicable parties) to confirm that Borrower is duly formed, validly existing and in good standing, and that the undertaking of the Mortgage Loan and related obligations have been duly authorized by all necessary parties.

Enforceability Opinion

An “enforceability” opinion is required any time you determine that any modification to the Loan Documents materially affects our rights and remedies as a secured creditor or interests in any collateral securing the Mortgage Loan.

Forms

Form opinions of Borrower’s counsel are available on www.fanniemae.com/multifamily. You may permit modifications to these forms (including additional or modified limitations, qualifications and assumptions) in accordance with the prudent lending standards and as may be deemed customary or appropriate opinion practice by a national or the applicable state bar association.



EXHIBIT A

TIER 3 OR 4 TRANSFER DELEGATION

Types of Transfers

The Tier 3 or 4 Transfer Delegation (**Transfer Delegation**) covers the following three types of ownership interest Transfers:

Transfer Type	Description
No Control Change Transfers	Transfers of ownership interests that are prohibited by the Loan Documents but do not: <ul style="list-style-type: none"> • result in a change of Control of Borrower or Key Principal, • replace Key Principal, or • divest Key Principal of its direct or indirect ownership interest in Borrower
Control Change Transfers	Transfers of ownership interests that are prohibited by the Loan Documents because they result in a change of Control of Borrower or Key Principal
Key Principal Replacement Transfers	Transfers of ownership interests that are prohibited by the Loan Documents because they result in the divestment of a Key Principal’s direct or indirect ownership interest in Borrower, requiring a new Key Principal

Modification Process

When modifying the Loan Documents under this delegation:

- add the modification language as a new subsection to Section 11.03 of the Loan Agreement (to avoid cross-referencing, numbering and other documentation errors), and
- ensure the modifications are consistent with the table below.

NOTE: Modifications to the assumption provisions are **not** permitted by the Transfer Delegation

Loan Document Term	No Control Change Transfers	Control Change Transfers and Key Principal Replacement Transfers
Notice of Transfer	<ul style="list-style-type: none"> • Notice should be provided at least 30 days prior to the Transfer but Lender may permit receipt of the Notice up to 15 days after the Transfer. • Notice must include an organizational chart and the applicable organizational documents. • Borrower must certify in the Notice that (1) no Event of Default has occurred and is continuing, (2) no change of Control has occurred or will occur as a result of the 	<ul style="list-style-type: none"> • Notice must be provided at least 30 days prior to the Transfer. • Notice must include an organizational chart and applicable organizational documents. • Borrower must certify in the Notice that (1) no Event of Default has occurred and is continuing, and (2) no Event of Default will occur as a result of the Transfer.



Loan Document Term	No Control Change Transfers	Control Change Transfers and Key Principal Replacement Transfers
	<p>Transfer, and (3) no Event of Default has occurred or will occur as a result of the Transfer.</p>	
<p>Approval/ Conditions</p>	<ul style="list-style-type: none"> • Lender may require that the Transfer be subject to Lender’s prior written approval • If a Transferee will own, directly or indirectly, 25% or more of the Borrower, Transferee must not be a Prohibited Person • Transferee must satisfy all requirements related to economic sanctions, anti-money laundering and anti-corruption • Lender may determine whether specific net worth, liquidity or experience thresholds are required, and include them as appropriate <p>Note: If the conditions to Transfer only require notice to Lender after the Transfer, the conditions must include a confirmation from Lender in advance (i.e., not an approval of the Transfer) that the Transferee is not a Prohibited Person and the Transferee satisfies all requirements related to economic sanctions, anti-money laundering and anti-corruption. Alternatively, if Lender’s approval is required as a condition to the Transfer, the approval may be limited to a “not to be unreasonably withheld” or similar standard so that the Lender may confirm that the Transferee is not a Prohibited Person and that the Transferee satisfies all requirements related to economic sanctions, anti-money laundering and anti-corruption (or reasonably withhold consent)</p>	<ul style="list-style-type: none"> • Lender’s prior written approval for the Transfer is required • Transferee must not be a Prohibited Person • Transferee must satisfy all requirements related to economic sanctions, anti-money laundering and anti-corruption • Lender will determine whether the Transferee must be underwritten at origination or upon change of Control • Lender may approve an unidentified “Qualified Transferee” based on applicable net worth, liquidity and experience level
<p>Transfer Fee</p>	<ul style="list-style-type: none"> • Lender may charge a reduced Transfer Fee of \$25,000 • Lender may waive its portion of the (full or reduced) Transfer Fee • Lender may waive the entire Transfer Fee if the Transferee is underwritten and approved at origination 	<ul style="list-style-type: none"> • Lender may charge a reduced Transfer Fee of \$25,000 for a Transfer to an affiliate of Key Principal that directly or indirectly Controls, is Controlled by, or is under common Control with, the Key Principal • Lender may charge a reduced Transfer Fee of \$50,000 for permitted “Buy/Sell” provisions with parties in Borrower’s



Loan Document Term	No Control Change Transfers	Control Change Transfers and Key Principal Replacement Transfers
		organizational structure at origination <ul style="list-style-type: none"> • Lender may charge a reduced Transfer Fee of \$50,000 for Transfers involving a change of pension fund advisor or investment fund manager • Lender may waive its portion of any (full or reduced) Transfer Fee in connection with its use of the Transfer Delegation.
Other	Borrower must agree to a reasonable further assurances provision to protect Lender	

Transfer Delegation Analysis

You must prepare an analysis of any modifications made under the Transfer Delegation and upload it to DUS Gateway. The analysis should demonstrate that the Transfer conditions appropriately address relevant issues. Considerations include:

- impact on the organizational structure or Control of Borrower or Key Principal;
- impact on the performance or management of the Mortgaged Property;
- the financial condition of the Transferor and Transferee;
- commercial real estate experience (including multifamily) of the Transferor and Transferee;
- “major decision” or similar discretionary rights in the organizational documents or ownership structure, including any changes in connection with the Transfer;
- material funding or other obligations in the organizational documents; and
- property condition and capital requirements.

If a Transferor’s financial condition or experience was material to your approval of a Mortgage Loan, the Transfer conditions must preserve the integrity of the original approval.

If the Transfer will result in a change of Control of the Borrower or Key Principal, or in a new Key Principal, the Transfer conditions must ensure that the replacement satisfies our underwriting requirements.

Transferees with a less favorable financial condition or less experience than the Transferor may be acceptable when the Transferor’s financial condition and experience exceed our underwriting requirements for the transaction so long as our underwriting requirements continue to be satisfied (including those relating to organizational structure). You must exercise this discretion judiciously when a Transfer is likely to affect Control of the Mortgaged Property, Borrower or Key Principal, or to divest or replace the Key Principal.

NOTE: Forms 6240.T2, 6240.T3 and 6240.T4 contain numerous examples of common scenarios for each type of Transfer and examples of acceptable provisions. You are not required to use these forms, but they may assist you in drafting.



EXHIBIT B

RESTRICTED DOCUMENTS AND RESTRICTED PROVISIONS

Reminder: Unless permitted under a Delegated Modification, you may not modify Restricted Documents and Restricted Provisions without our approval.

CONVENTIONAL LOAN DOCUMENTS	
Loan Document	Restriction
Multifamily Note	entire document
Security Instrument	entire document
Guaranty of Non-Recourse Obligations	entire document
Guaranty (Payment)	entire document
Environmental Indemnity Agreement	entire document
Multifamily Loan and Security Agreement	Section 2.02 - Payments on Mortgage Loan Section 2.03 - Lockout/Prepayment Article 3 - Personal Liability Section 4.01(g) - Economic Sanctions, Anti-Money Laundering and Anti-Corruption Section 4.01(h)(3) – Borrower Single Asset Status Section 4.01(m) - ERISA Section 4.01(o) -Prohibited Person Section 4.02(b) - Economic Sanctions, Anti-Money Laundering, and Anti-Corruption Section 4.02(d) - Borrower Single Asset Status Section 4.02(e) - ERISA Section 6.01(a) - Compliance with Law, Permits and Licenses Section 6.02(e) - Compliance with Laws Article 11 - Liens, Transfers, and Assumptions Article 14 - Defaults/Remedies Schedule 1 Schedule 3
Assignment of Management Agreement	Section 5(b) Section 6(b)
All Mezzanine Debt Form Documents	entire document Includes Forms 6437, 6438, 6439 & 6440
Assumption and Release Agreement	entire document



To the extent not otherwise modified below, the Restricted Documents and Restricted Provisions from the Conventional Loan Documents apply to the Seniors Housing Loan Documents.

SENIORS HOUSING LOAN DOCUMENTS	
Loan Document	Restriction
Multifamily Loan and Security Agreement (Seniors Housing)	<p>Section 4.01(r) - Borrower/Property Operator Compliance with Laws</p> <p>Section 4.02(j) - Borrower/Property Operator Compliance with Laws</p> <p>Section 6.01(a) - Mortgaged Property Compliance with Laws; Permits and Licenses</p> <p>Section 6.01(b) - Operating Documents; Contracts; Resident Records</p> <p>Section 6.01(f) - Personal Property</p> <p>Section 6.01(g) - Medicaid Provider Agreement Representations</p> <p>Section 6.02(a)(1), (7) and (8) - Use of Property</p> <p>Section 6.02(e) - Mortgaged Property Compliance with Laws</p> <p>Section 6.02(f) - Licensing</p> <p>Section 6.02(g) - Medicaid Provider Agreement</p> <p>Section 6.02(h) - Management Agreement</p> <p>Section 6.02(i) - Change in Property Manager</p> <p>Section 6.02(j) - Contracts</p> <p>Section 6.03(b) - Subordination of Fees by Affiliated Property Manager</p> <p>Section 7.01(c) - Seniors Housing Facility Lease</p> <p>Section 7.02(g) - Special Covenants Regarding Seniors Housing Facility Lease</p> <p>Section 7.03(c) - Seniors Housing Facility Lease Structure Consideration</p>
Government Receivables Depository Agreement and Government Receivables Collection Account Agreement	entire document
Modifications to Multifamily Loan and Security Agreement (Medicaid Transition Reserve)	entire document
Modifications to Multifamily Loan and Security Agreement (Post-Closing License Transfer)	entire document
Modifications to Security Instrument (Seniors Housing)	entire document
Opinion of [Operator's][Borrower's] Counsel on Origination of Mortgage Loan (Seniors Housing Licensing)	Sections 8, 9, 10 and 11