Client Alert

September 2023

Don’t Forget! New Robust Financial Guidelines for Fannie Mae and Freddie Mac Seller/Servicers and Ginnie Mae Issuers Set to Commence September 30, 2023

Overview

Most spend the last few days of summer relaxing under the sun and eagerly awaiting the first pumpkin spice latte of the fall season. But for seller/servicers and issuers striving to remain eligible under the Federal Housing Finance Agency (“FHFA”) and Government National Mortgage Association (“Ginnie Mae”) guidelines, the end of the summer is the time for buckling down and ensuring they meet the updated liquidity and capital requirements scheduled to become effective on September 30, 2023.

On August 17, 2022, in response to a growing percentage of regulated banks selling their mortgage servicing rights (“MSRs”) to nonbank servicers, the FHFA and Ginnie Mae 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 Government-Sponsored Enterprises (“GSEs”) and improving alignment among Fannie Mae, Freddie Mac and Ginnie Mae participants, they diverge as noted in the tables below.

Over the last year, the announcement of these heightened requirements and this divergence have 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 Requirement (“RBCR”) discussed below. A product of Ginnie Mae’s engagement with its issuer community, the *Frequently Asked Questions about Ginnie Mae’s Amended Eligibility Requirement* released last fall shed additional light on Ginnie Mae’s rationale for the amended eligibility requirements and foreshadowed how the requirements may impact issuer’s financing of MSRs after the effectiveness of the amended eligibility requirements.

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: ○ Agency MBS ○ Obligations of GSEs ○ US Treasury Obligations	• Unrestricted Cash and Cash Equivalents • The following unpledged, Available-for-Sale or Held-for-Trading securities: ○ Agency MBS ○ Obligations of GSEs ○ US Treasury Obligations • 50% of the unused portion of committed Agency servicing advance lines of credit (LOCs)	All 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
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
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,	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
		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	

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

Many, though not all, of these requirements are scheduled to become effective on September 30th. The revised definitions of "Tangible Net Worth" and "Eligible Liquidity" and the requirements relating to Minimum Tangible Net Worth, Base Liquidity and Liquidity Buffer will all come into effect on September 30th. Meanwhile, the Origination Liquidity and Third-Party Ratings requirements are scheduled to become effective on December 31, 2023, and the Capital and Liquidity Plan requirements are not scheduled to come into effect until March 31, 2024.

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: 35 bps • PLS & Other Servicing: 25 bps	All Issuers
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

The most noteworthy new requirement under the new Ginnie Mae guidelines is the RBCR, which will apply to all Single-Family Issuer Applicants. However, unlike the majority of the revised guidelines, which become effective in the remaining months of 2023, implementation of the RBCR requirement was extended to December 31, 2024. Similar to the revised FHFA requirements, the revised Ginnie Mae requirements relating to Minimum Tangible Net Worth, Base Liquidity, and Eligible Liquidity are scheduled to come into effect on September 30th, and the Origination Liquidity requirements will be effective December 31, 2023.

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 beginning at the end of next year.

Key Takeaways

Particularly in light of the rapidly approaching September 30th implementation date for the updated Tangible Net Worth and Eligible Liquidity definitions and the Minimum Tangible Net Worth, Base Liquidity, and Liquidity Buffer requirements, Ginnie Mae issuers and GSE seller/servicers should ensure they are compliant with the updates. Non-bank GSE seller/servicers may want to explore securing servicer advance facilities as a means to satisfy the enhanced Eligible Liquidity requirement.

The structures for servicer advance financing facilities range from revolving lines of credit (or repurchase facilities) secured by a pledge or sale of the servicer’s advance receivables attributable to specified servicing agreements to securitization structures, including master trust structures allowing revolving variable funding notes. The structuring of servicer advance financing facilities raises complicated issues regarding Uniform Commercial Code (“UCC”), tax, bankruptcy, and securities laws. We understand the challenges involved, and are adept at generating creative solutions. Hunton Andrews Kurth LLP has brought together lawyers from our structured finance, tax, and bankruptcy groups to focus our combined experience on assisting our clients in developing innovative transactions for financing and investing in servicer advances.

Ginnie Mae issuers and GSE seller/servicers should continue to engage with Ginnie Mae and the FHFA on the amended eligibility requirements that are not yet effective. 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 Ginnie Mae’s risk-based capital requirement. Doing so will ensure a smooth transition into a refreshed MSR regulatory period, like saying goodbye to summer sun and embracing the pumpkin spice.

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