

Agency Guides/Fannie Mae Multifamily/Delegated Underwriting and Servicing Guide/Part III: New Underwriting (04/07/09)/Part IIIA: Base Underwriting Requirements (04/07/09)/Chapter 4: The Borrower, Key Principals and Principals (04/29/11)/Section 401: Generally (04/29/11)

Section 401: Generally (04/29/11)

The Lender must perform an overall risk assessment of the ownership entity, Key Principals and Principals taking into consideration the specifics of the transaction. In all events, the Lender must obtain and analyze any information that it determines is necessary to complete an appropriate credit review, including:

- organizational structure;
- multifamily business experience and qualifications;
- general credit history; and
- current and prospective financial condition.

The financial strength, experience, qualifications, character and credit history determined by the analysis must be commensurate with the size, complexity, structure and risks of the transaction.

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Section 402.01: Single Asset Entity (04/29/11)

Except as provided below, the only eligible Borrower structure is a domestic single-asset entity Borrower. The **Lender's analysis of the Borrower and the Borrower's organizational documents must include a determination of whether:**

- the acquisition of any additional real property, personal property or assets other than the Property is permitted;
- the operation or participation in any business other than the management and operation of the Property is permitted;
- the Borrower's assets or funds are commingled with those of any other Person and, if so, whether such assets or funds can be segregated and identified;
- the Borrower's financial statements, accounting records and other organizational documents are maintained with those of any other Person; or
- the Borrower has assumed, guaranteed or obligated itself for the liabilities of any other Person (except in connection with the Mortgage Loan or the endorsement of negotiable instruments in the ordinary course of business).

If a Borrower owns more than a single asset, the Borrower will still qualify as a single-asset entity so long as Fannie Mae holds all Mortgage Loans securing the Borrower's real property assets and the Borrower is not permitted to acquire any additional assets.

The Borrower may be ultimately owned by foreign persons or entities, so long as at least one (1) U.S. tier has been established.

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The Borrower, Key Principals and Principals (04/29/11)/Section 402: Borrower Organizational Structure (04/29/11)/Section 402.02: Co-Tenant Borrowers (04/29/11)/A. Eligibility (02/16/11)

A. Eligibility (02/16/11)

Co-tenants may be an eligible Borrower if:

- no more than five (5) co-tenants comprise the Borrower;
- no co-tenant is an individual; and
- each co-tenant is a single asset entity [satisfying the requirements of Section 402.01 of this Chapter](#);

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B. Tenancy-in-Common Agreement (02/16/11)

A tenancy-in-common agreement [must be in place or entered into by all co-tenants at the time of the Mortgage Loan closing](#) and the Lender must verify that such agreement provides, [at a minimum](#), that:

- the Key Principal(s) has sufficient control to satisfy any Internal Revenue Service requirements;
- the Key Principal(s) has buy-out rights as to any other co-tenant and is financially able to effect such a buy-out;
- the Key Principal(s) has been named as the party to receive all notices or other communication from the Lender on behalf of all co-tenants; and
- each co-tenant has waived any Lien or partition rights or remedies against all other co-tenants.

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C. Key Principal Execution of Guaranty (02/16/11)

[At least one \(1\) Key Principal must be named for each co-tenant and each such Key Principal must execute a Guaranty of the Non-Recourse Obligations \(Form 6015\) or Guaranty \(Payment\) \(Form 6020\), as applicable, if a guaranty is required for the Mortgage Loan.](#)

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A. Pre-Review Mortgage Loan (02/16/11)

A Mortgage Loan that does not comply with the requirements of this Section 402.02 is a Pre-Review Mortgage Loan.

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Section 402.03: Delaware Statutory Trust Borrowers (04/29/11)

A Mortgage Loan having a Borrower that is a Delaware Statutory Trust is a Pre-Review Mortgage Loan.

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Section 402.04: Entity Borrower with Designated Term; Fund Borrowers (04/29/11)

A Mortgage Loan having an entity Borrower that does not have perpetual existence and whose organizational documents specify a term of existence (which term may be determined by including any extension option term that is exercisable solely at the general partner's or managing member's election) and such term (plus any such extension option) is less than the term of the Mortgage Loan is a Pre-Review Mortgage Loan. In addition, for Borrowers who rely on equity investments for its continued existence from fund investors, the Lender's analysis of such entity must include:

- the experience and performance history of the fund manager in connection with managing other similar funds;
- the fund's ability to raise equity from financially substantial investors;
- the performance of the fund;
- the leverage level of the fund;
- the net worth and liquidity of the fund; and
- the quality of the Property and market where the Property is located.

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Section 403.01: Generally (04/29/11)

For each Mortgage Loan the Lender must identify all Key Principals and Principals of the Borrower. At least one Key Principal must have an ownership interest in the Borrower. Any Key Principal that provides a guaranty of the recourse obligations ([whether full recourse or non-recourse carveouts](#)) of the Mortgage Loan must be a non-foreign

person or entity.

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Section 403.02: Entity Key Principals (04/29/11)

Entity Key Principals are permitted. Any entity Key Principal must have an established acceptable track record of business performance and sufficient financial strength. Any Key Principal entity assuming liability for the exceptions to non-recourse provisions under the Loan Documents must:

- be an existing entity (a corporation, limited liability company, limited liability partnership, or other acceptable structure and not newly formed).
- be a well-capitalized, stable, on-going business concern and of the type that would be expected to continue to remain financially healthy and be able to support the Property and to meet all Key Principal requirements over the life of the Mortgage Loan. Typically, the entity's assets and net worth should be significantly in excess of what would be minimally acceptable for an individual acting as Key Principal.
- be the type of business that, outside of its obligations to other assets with which it is directly involved, would make it unlikely that assets would be siphoned off for use by other entities or transferred, sold or otherwise disposed of in order to avoid meeting Key Principal obligations.

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A. Review and Analysis of Fund Required (04/29/11)

For any Fund Key Principal or Fund Principal, the Lender must review the relevant organizational documents and private placement memorandum, if applicable, to ascertain:

- the entity's expiration date;
- whether any extension to the entity's existence is provided and, if any such extension provisions exist, the conditions to approving the extension; and
- the process for winding up the business affairs of the entity;

The Lender's analysis of such entity must include:

- the experience and performance history of the entity's manager in connection with managing other similar funds;
- the entity's ability to raise equity from financially substantial investors;
- the performance of the entity;
- the leverage level of the entity; and
- the net worth and liquidity of the entity.

The Lender must document its analysis of the Fund Key Principal or Fund Principal and justify its credit analysis in the Lender's Transaction Approval Memo.

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B. When the Mortgage Loan is Backing an MBS (04/29/11)

If the Mortgage Loan will be backing a Fannie Mae MBS and if the transaction involves a Terminating Fund Key Principal, then the MBS issued will require special disclosure of such fact.

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C. Assumption or Transfer of MBS Mortgage Loan (04/29/11)

If the proposed new Key Principal of the proposed new Borrower is a Terminating Fund Key Principal, then the Mortgage Loan is not assumable by nor may it be transferred to the proposed new Borrower.

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Section 404: Financial Statements (04/29/11)

The Lender must obtain signed financial statements that are dated less than 12 months prior to the Commitment Date from all parties relevant to the transaction. If the signed financial statements are more than 12 months old, a "no adverse change" statement signed by the relevant party and dated within 30 days prior to loan application must be obtained. Financial statements more than 24 months old are not acceptable. All financial statements should contain:

- a schedule of real estate owned by the party providing the financial statement;
- all other assets, including notes receivable from related entities, and an estimate of the market value of each asset and the basis for calculating value estimates;
- all liabilities and contingent liabilities, including debts under lines or letters of credit, personal guaranties, unmet obligations to partnerships or other entities and other obligations in the future (the amount and timing of all such obligations must be specified or described); and
- any other factors that may materially impact the Borrower's or Key Principal's financial position immediately or during the term of the Mortgage (including any known threat of potential lawsuits that may arise from such parties' business operations).

If the Lender fails or is unable to obtain [any](#) of the above information, the Lender must document the reasons for such failure or inability and justify its credit analysis in its Transaction Approval Memo.

The financial statements submitted by Principals need not contain every item listed above, as long as the Lender is satisfied that the financial statement adequately reflects the Principal's solvency.

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Section 405: Credit Reports, FICO Scoring, and Credit Report Review for Mortgage Loans \$3,000,000 or Less (04/29/11)

For any Mortgage Loan having an original principal amount of \$3,000,000 or less, the following requirements apply for all individual Borrowers (if a waiver of the single asset entity requirement has been approved) and all individual Key Principal(s) and Principal(s).

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Section 405.01: Credit Report (04/29/11)

Credit reports are required for all individual Borrowers and all individual Key Principal(s) and Principal(s). Credit reports must be obtained from at least two (2) of the following credit information repositories:

- Equifax,
- Experian, or
- TransUnion.

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Section 405.02: FICO Scoring (04/29/11)

All individual Borrowers, Key Principals, and Principals must achieve a Minimum FICO Requirement as provided in the Multifamily Underwriting Standards (Form 4660), Section VII, Small Mortgage Loans. The Minimum FICO Requirement must be determined as follows:

- if credit reports are obtained from two (2) of the three (3) approved credit information

repositories, then the lower score must be utilized, or

- if credit reports are obtained from all three (3) credit information repositories, then the middle score must be utilized.

If any of the individual Borrowers, Key Principals or Principals are married couples, then the Minimum FICO Requirement must be calculated using the lower FICO score of the two parties.

If there are multiple individual Key Principals and Principals of the Borrower of the same Mortgage Loan, the Lender is required to use the average of their respective FICO scores to represent the Minimum FICO Requirement. In all cases, however, an individual FICO score (determined as set forth above) for each Key Principal(s) and Principal(s) must be 620 or greater.

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Section 405.03: Reviewing the Credit Report (04/29/11)

The Lender must conduct a thorough review and analysis of the individual Borrower's and each individual Key Principal's credit report. Such review and analysis must assess whether there is reported:

- any mortgage late payments occurring within the previous 36 months;
- any excessive revolving or installment late payments occurring within the previous 12 months;
- any credit card or other unsecured debt balances deemed excessive by the Lender;
- any tax liens that have been filed or reported within the previous five (5) years;
- any discharged bankruptcies or mortgage foreclosures occurring within the previous ten (10) years; or
- any outstanding judgments or collections that exceed \$5,000.

Without regard to whether the individual Borrower or any individual Key Principal or Principal has met the Minimum FICO Requirement, if any of the above matters are reported or there is other derogatory credit history reported in the credit report, the Borrower must provide satisfactory explanations regarding such matters and the Lender must validate such explanations and determine that future delinquencies are unlikely. Any such determination must be documented in the Lender's Transaction Approval Memo.

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Section 406: Fraudulent Conveyance (04/29/11)

The Lender must not make any Mortgage Loan if it has reason to believe there is an actual intent by the Borrower or its Key Principals or Principals to delay, hinder, or

defraud creditors.

To show that the Mortgage Loan was made in good faith, a careful review of the facts is needed to provide a defense to a fraudulent conveyance or fraudulent transfer type of claim. The Lender must obtain the Underwriting Certification (Form 4667). The Underwriting Certification must be reviewed as part of the Lender's credit review and held in the Lender's Servicing File.

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Section 407: Certification (04/29/11)

The Borrower and any other party relevant to the transaction must execute and provide to the Lender the Underwriting Certification (Form 4667) that certifies the accuracy and completeness of the rent roll, the operating statement, all financial statements and schedule(s) of real estate owned, as applicable (copies of which are to be attached to the Certification), and such other information as is included in the Certification. Each Certification must:

- be signed and certified as true, correct, and complete,
- dated not more than 90 days prior to the date the Lender requests a Commitment from Fannie Mae, and
- updated with either a new Certification or a certification of no adverse change, if the 90-day period is exceeded.

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Section 408.01: Requirement (04/29/11)

For both initial applications and assumptions, the Lender is required to perform an ACheck of the Borrower and each Key Principal and Principal of the Borrower. **If the Key Principal is an entity, an ACheck of any person that owns or controls the Key Principal is required.**

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Section 408.02: Where to Find the Multifamily Applicant Experience Check Application (04/29/11)

The Multifamily Applicant Experience Check application is located on the www.efanniemae.com website under the Technology Tools & Applications submenu.

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Section 408.03: When to Use Multifamily Applicant Experience Check Application (04/29/11)

The Lender must make the ACheck request as soon as an application request is received and the Lender has the necessary TIN(s) and/or SSN(s). If all parties have not been identified at this stage in the loan application process, the Lender must execute another ACheck for all Key Principals and Principals of the Borrower as soon as they are identified.

The Lender must repeat the request if over 90 days will pass between the initial ACheck request and Commitment in the case of an application.

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Section 408.04: Multifamily Applicant Experience Check Results (04/29/11)

The Multifamily ACheck application will provide an electronic response instantaneously.

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A.: "Yes" Response (04/29/11)

A "Yes" response means that the Lender may proceed with the loan application. A "Yes" response does not mean that the Borrower, Key Principal, or Principal is approved and the Lender is still required to complete all of the Mortgage Loan credit underwriting required elsewhere in this Chapter.

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B.: "No" Response (04/29/11)

A "No" response means the Lender may not proceed with an application involving the Borrower, Key Principal, or Principal for which a "No" response was given for a Mortgage Loan intended to be delivered to Fannie Mae. The Lender may not proceed with a loan

application by omitting as an identified Key Principal or Principal any Key Principal or Principal for which a "No" response was given. A "No" response indicates only that the Lender must have direct communication with Fannie Mae. The "No" response must not be used by the Lender as the sole reason for rejection or denial of credit in the case of any transactions not involving Fannie Mae. Any Lender that improperly uses any information obtained or compiled from the response(s), including using this information as the sole grounds for rejection of the prospective Borrower, Key Principal, or Principal in a transaction not involving Fannie Mae, will be deemed to have agreed to indemnify Fannie Mae against any and all losses and costs, including attorneys' fees, which may be incurred by Fannie Mae as a result of such improper use.

The Lender will not be provided any information as to why a particular Borrower, Key Principal, or Principal received a "No" response. The Lender must follow the instructions provided by the ACheck Application.

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Section 408.05: Confidentiality (04/29/11)

The Lender is responsible for establishing procedures to ensure that the ACheck responses obtained for all Borrowers, Key Principals, and Principals remain confidential.

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Section 408.06: Maintenance of Experience Check Results (04/29/11)

The Lender must print dated copies of its ACheck inquiries and responses for the Mortgage Loan and maintain such copies in the Lender's files.

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Section 409: OFAC Compliance (04/29/11)

All Lenders that deliver Mortgage Loans to and/or service Mortgage Loans for Fannie Mae must establish and maintain an effective U.S. Treasury Department Office of Foreign Assets Control (OFAC) compliance program.

Fannie Mae will not purchase any Mortgage Loan in which the Borrower, Key Principal, or Principal is a "specially designated national and blocked person" on the list (SDN List) maintained by OFAC. It is the Lender's responsibility to determine and verify that each Borrower, Key Principal, and Principal (including any proposed substitute Borrower, Key Principal or Principal in connection with a transfer or assumption of the Mortgage Loan)

is not listed on the most recent OFAC SDN List prior to delivery of the Mortgage Loan to Fannie Mae.

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Section 410: Execution of Exceptions to Non-Recourse Guaranty (04/29/11)

For any Mortgage Loan having an Underwritten DSCR of less than 1.35 or an LTV of greater than 65%, the Key Principals is required to execute an Exceptions to Non-Recourse Guaranty (Form 4501) or [Guaranty of Non-Recourse Obligations \(Form 6015\)](#), as applicable. No execution by Key Principals of the Exceptions to Non-Recourse Guaranty ([Form 4501](#)) or [Guaranty of Non-Recourse Obligations \(Form 6015\)](#), as applicable, is required for cooperatives and publicly traded entities.

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Section 411: Security Instrument Transfer Provisions (04/29/11)

The transfer provisions of the Security Instrument must provide that a Key Principal identified in the Security Instrument cannot transfer, sell, assign, or pledge his or her interest in the Borrower or in any intermediary entity that has an interest in the Borrower (except for limited partnership interests) without the prior written consent of Fannie Mae.