

# Mortgage Banking Update

PATTON BOGGS LLP | NOVEMBER 9, 2009

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## IN THIS ISSUE:

**Fannie Mae Reveals Deed-for-lease Program**

**Homebuyer Tax Credit Extended and Modified**

## DID YOU KNOW?

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## FANNIE MAE REVEALS DEED-FOR-LEASE PROGRAM

On November 5, 2009, Fannie Mae announced its Deed-for-Lease Program, which became effective immediately. The program permits a qualifying borrower who owns property and subsequently transfers it to Fannie Mae through deed-in-lieu of foreclosure (DIL) to lease such property from Fannie Mae for a period of up to 12 months.

In the event that a mortgage servicer determines that a borrower is eligible for a DIL in the normal course of business and such borrower meets Fannie Mae's predetermined eligibility criteria, the servicer shall notify Fannie Mae that the borrower may be eligible for the Deed-for-Lease Program.

Thereafter, Fannie Mae or its designee will take the appropriate steps to: (1) verify whether the property and borrower are eligible for the program; (2) determine the rental rate under the program; and (3) execute the lease agreement, to the extent appropriate. Prior to accepting a DIL in connection with the Deed-for-Lease Program, mortgage servicers must ensure that the borrower executes a general release, in favor of Fannie Mae, the servicer and their agents, of all claims arising prior to the acceptance of the DIL that relate in any way to the loan or the property.

In order to be eligible for the Deed-for-Lease Program, each mortgage servicer must prescreen the borrower and subject property for the following eligibility criteria:

- The existing mortgage loan must be held in Fannie Mae's portfolio or must be a mortgage loan that is part of a mortgage-backed securities (MBS) pool that has the special servicing option or a shared-risk MBS pool for which Fannie Mae markets the acquired property.
- The mortgage loan is a first lien mortgage loan secured by 1-4 family residential real property that is an owner's primary residence or, in the event that the property is leased, such tenant must use the property as their primary residence. To the extent there are subordinate-lien loans on the property, lien releases must be obtained.
- The occupant of the property (either the borrower or the borrower's tenant) must have verifiable income.
- The mortgage loan must not be guaranteed or insured by a federal agency (FHA, HUD, VA or Rural Development).
- The borrower must have made at least three payments since the origination of the loan or since the last modification of such loan and, at the time of the referral to Fannie Mae for the Deed-for-Lease Program, must not be 12 or more payments past due on the mortgage loan.
- The borrower must not be involved in an active bankruptcy proceeding and may not be a party to litigation involving the property that is the subject of the Deed-for-Lease Program.
- Marketable title for the property must be able to be conveyed.

## LOOKING AHEAD:

### AllRegs Webinar

November 12

**Topic:** Understanding RESPA Reform

**Time:** 2:00 – 4:00 p.m. EST

**Patton Boggs participant:**  
**Richard Andreano**

### LBA's Bank Counsel Conference

November 13

**Location:** The Ritz Carlton, New Orleans

**Topic: RESPA Reform:** The Latest from Washington, DC

**Time:** 10:35-11:35 a.m. CST

**Patton Boggs participant:**  
**Richard Andreano**

### Mortgage Lending Practices Under Fire Webinar

December 2

**Topic:** Compliance, enforcement and litigation risks resulting from the changing regulatory regime in mortgage lending

**Time:** 1:00 – 2:30 p.m. EST

**Patton Boggs participants:**

**Patrick McManemin**

**Michael Waldron**

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In the event that a property meets the prescreening criteria, Fannie Mae or its designee will verify that the property meets the following additional criteria:

- The property must be in compliance with local rules or laws or must be in a position to be brought into compliance with those rules within 30 days.
- The rental income must be acceptable to cover ongoing maintenance and management costs.
- There must not be any zoning or homeowner's association rental limitations that would prohibit the Deed-for-Lease Program.
- Any necessary repairs to make the property habitable must be deemed to be in an acceptable amount based upon the property value.
- The property must not be within an area designated for any corporate, government or community neighborhood stabilization plan that may need the property as part of such plan for a non-residential purpose.

Occupants will be eligible for the Deed-for-Lease Program so long as:

- Their income is sufficient to cover rental payments of not more than 31 percent of gross income.
- The occupant agrees to be responsible for regular maintenance, has kept and agrees to keep the property in good condition and will permit marketing of the property for sale.
- The property will be used as their primary residence and the number of occupants is appropriate for the home and in compliance with local laws and homeowner association rules.
- To the extent the occupant has pets, renter's insurance is obtained if required.
- The occupants agree to a credit review and all occupants over the age of 18 must have an acceptable background check, including receipt of clearance from the Office of Foreign Assets Control.
- There are no signs or reports of illegal activities conducted at the property.

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## HOME BUYER TAX CREDIT EXTENDED AND MODIFIED

Last week Congress approved and President Obama signed into law an extension of the first-time homebuyer tax credit, with modifications. The credit is now available if a home purchase contract is entered into on or before April 30, 2010 and the closing occurs on or before June 30, 2010. Before the extension, the credit would have been available for homes purchased on or before November 30, 2009.

The amount of the credit remains the lesser of 10 percent of the home's purchase price or \$8,000 for married couples filing jointly and \$4,000 for individuals (including a married person filing separately). The income limitations are increased from a modified adjusted gross income of \$150,000 to \$225,000 for married individuals filing jointly and from a

modified adjusted gross income of \$75,000 to \$125,000 for individuals (including a married person filing separately). However, there now is a requirement that the purchase price of the residence not exceed \$800,000.

Active military personnel who are out of the country on qualified official extended duty service are eligible for the credit if they purchase a home on or before April 30, 2011 and close on or before June 30, 2011.

Congress also added a homebuyer tax credit for persons who have owned and lived in the same home as their principal residence for any five-consecutive-year period during the eight-year period ending on the date of the purchase of the new principal residence. The credit is lesser of 10 percent of the purchase price or \$6,500 for married couples filing jointly and \$3,250 for individuals (including a married person filing separately).

Congress took steps to enhance the administration of the credit in an effort to address fraudulent attempts to claim the credit. Measures include limiting the credit to individuals who are at least 18 years old, and requiring that a properly executed copy of the settlement statement used to complete the purchase be attached to the tax return.

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## **DID YOU KNOW**

- In mid-September, HUD announced that it is broadening its requirement for FHA-approved mortgagees to provide notification of regulatory issues the entity or certain individuals affiliated with the entity encounter. Approved mortgagees will be required to provide written notification on company letterhead, signed by a senior officer, if the mortgagee or any of its officers, partners, directors, principals, managers, supervisors, loan processors, loan underwriters or loan originators is subject to a debarment, suspension, Limited Denial of Participation or application of other sanctions, exclusions, fines or penalties under state or federal law. The mortgagee will also be required to provide written notice of any revocation of a state-issued mortgage loan originator license or similar declaration of ineligibility under state law. HUD does not specify a reporting time period, other than "immediate." The changes do not become effective until the Office of Management and Budget issues an approval number, which to date has not occurred.
- Although the majority of licenses and approvals that utilize the Nationwide Mortgage Licensing System have renewal submission deadlines of December 31, a number of approvals do not. For example, Kentucky renewals must be submitted on or before November 30, 2009. Renewals in Delaware, Georgia, Iowa, Puerto Rico, South Dakota and Vermont must be submitted on or before December 1, 2009.

- Iowa Regulated Loan Licenses and Industrial Loan Licenses are transitioning to the Nationwide Mortgage Licensing System (NMLS). Regulated and Industrial Loan Licensees must renew their licenses through the NMLS, by applying for a new Master Loan Company Registration, no later than December 1, 2009.
- The North Carolina Secure and Fair Enforcement Mortgage Licensing Act (“North Carolina SAFE Act”) eliminated the surety bond exemption for “Qualified Lenders” (HUD-approved supervised or nonsupervised institutions) and “Qualified Servicers” (HUD-, FNMA-, or FHLMC-approved servicers) that maintain a net worth of \$250,000. Mortgage Lenders and Mortgage Servicers that were previously exempt must provide a surety bond in order to renew their licenses expiring on December 31, 2009. The North Carolina SAFE Act did enact a new surety bond exemption provision, allowing the bond to be waived if: (1) the licensee has been licensed for at least three years; (2) the licensee can demonstrate (by audited financial statements) a net worth of at least four times the required bond amount, and certify that such a net worth shall be maintained at all times; (3) the North Carolina Commissioner of Banks (“Commissioner”) believes the licensee has a satisfactory history of resolving complaints from consumers and responding to findings of investigations or examinations from the Commissioner; and (4) the Commissioner has no reason to believe the licensee will be unable to resolve complaints, respond to examination or investigative findings or fulfill financial obligations under the North Carolina SAFE Act. Additionally, as a result of the amended provisions, companies that maintained a North Carolina surety bond, prior to the passage of the North Carolina SAFE Act, may be required to increase the surety bond amount in connection with this year’s license renewal.

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